Non-Confidential Version

Dalrymple Bay Coal Terminal Pty Ltd

Submission in support of authorisation for proposed queue management system at Dalrymple Bay Coal Terminal

5 April 2005

Dalrymple Bay Coal Terminal

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1 Executive summary

1.1 Purpose of submission

This submission is made by Dalrymple Bay Coal Terminal Pty Ltd ("**DBCTPL**") in its capacity as operator of the Dalrymple Bay Coal Terminal ("**Terminal**"). This submission supports DBCTPL's applications for authorisation of the proposed solution to the current extensive vessel queue at the Terminal, under sections 88(1) and 88(7) of the *Trade Practices Act 1974 (Cth)* ("**TPA**").

The particular conduct to be authorised is the operation of the proposed queue management system ("**QMS**") to address the imbalance between the demand for coal loading services at the Terminal and the capacity of the Goonyella coal chain, including the Terminal (together "**System Capacity**"), to meet this demand.

This imbalance has led to a substantial, and growing, queue of vessels (currently numbering over 50 as at 30 March 2005) off the coast of Australia with resulting substantial deadweight demurrage charges for Australian coal producers. This vessel queue has also lead to complaints from international coal purchasers and Australia's trading partners as to delays and costs as well as damage to Australia's and the Terminal's export reputation.

DBCTPL is also seeking urgent interim authorisation of the QMS under section 91 of the TPA. The Terminal's vessel queue has been steadily trending up in the last 5 months. In the absence of intervention, if the current trend continues, demurrage costs could be as high as A$550 million for 2005.

It is estimated that even with an almost immediate initiation of the QMS it will take two - three months to reduce the vessel queue to a workable queue given existing System Capacity.

Therefore the sooner the QMS can be implemented, the earlier the vessel queue can be managed to a workable and efficient queue at the Terminal with resultant savings. Accordingly, the Australian Competition and Consumer Commission ("**Commission**") is requested to consider this authorisation application as soon as practicable.

As the QMS will operate on a periodical basis, if the Commission were to ultimately decide not to provide a final authorisation, the QMS could be terminated on several months' notice such that granting an interim authorisation will not have an irreversible effect.

1.2 DBCTPL

DBCTPL operates the Terminal at the Port of Point Hay in Queensland. The Terminal is the largest export coal handling facility in Queensland and one of five export coal handling facilities serving the northern Bowen Basin.

The Bowen Basin coal reserve is the largest in Australia and the 34 operational coal mines in the area extract over 100 million tonnes annually, which is approximately 83% of Queensland's coal production. The area generates most of Queensland's $6.7 billion black coal export earnings.

Accordingly, the Bowen Basin coal industry is of strategic national and regional significance and, in particular, is important to the Mackay and Bowen Basin regional economies and the Australian economy in general.

The Terminal currently has stated capacity to load approximately 54 million tonnes of coal per annum. With the collapse of a coal reclaimer in 2004, capacity has been decreased by approximately 5% of Terminal capacity.

During the period that the vessel queue has formed and while it continues to operate, average vessel size has also reduced by some 5,000 dead weight tonnes ("**dwt**"), eroding System Capacity.

DBCTPL is an incorporated joint venture company, owned by a number of coal producers in the Bowen Basin coal industry. A list of these shareholders appears in Section 2. Those shareholders make up the majority of coal exported from the Terminal - see Confidential Attachment E - and are the coal companies incurring the majority of deadweight demurrage costs.

1.3 The problem of extensive vessel queues

There is strong world demand for coal. That demand is currently outstripping System Capacity to export coal. Producers of coal are facing a congested coal chain and ship loading facilities. This is causing substantial queues of vessels to form and the coal producers are incurring substantial levels of demurrage.

At the Terminal as at 30 March 2005, there was a vessel queue of over 50 ships waiting to be loaded. Given current forecasts and capacity, the queue is expected to continue to grow during 2005 and demurrage for the whole of calendar year 2005 could be as high as A$550 million if the problem is not addressed.

Replacement of the collapsed coal reclaimer and other immediate expansion plans scheduled for implementation in 2006, although anticipated to increase System Capacity, are considered unlikely to restore a "demand : capacity" balance. Further expansion of System Capacity, including the Terminal, is not anticipated to be commissioned before late 2007. This means that excessive demurrage may continue to be incurred between now and at least late 2007 as long as demand continues to outstrip System Capacity.

Those substantial demurrage charges are significant financial imposts to coal exporters, coal producers and, indirectly, to the Australian and Queensland economies.

Under Free on Board ("**FOB**") export coal sales terms, the buyer charters the vessel, however the coal producer is responsible for paying any demurrage charges incurred, based on the waiting time of the vessel, the contract loading rate and the demurrage rate specified for the vessel and/or provided for in the coal sales contract. Demurrage charges are paid to ship owners (almost all, if not all, are overseas-based companies) for their ships to sit idle for significant periods of time while waiting to be loaded.

This represents a significant dead-weight loss both to coal exporters and to the Bowen Basin region in general. Amounts paid in demurrage are, of necessity, diverted from potential re-investment in Bowen Basin and Australian businesses to overseas ship owners for their ships to be unproductive off the coast of Queensland.

The vessel queue is also causing substantial damage to the international reputation of the Terminal, Bowen Basin coal exporters and the Australian coal industry in general.

Coal customers are already shifting purchases to other suppliers in Australia or overseas. Lost exports are an opportunity foregone for the Australian economy.

The proposed QMS will substantially reduce economic inefficiency until expansion of System Capacity occurs, and it will alleviate Bowen Basin coal exporters paying substantial demurrage charges as well as prevent further damage to international reputation and competitiveness.

1.4 Causes of the vessel queue

DBCTPL believes that current extensive vessel queues are caused by a combination of:

- high international demand for coal, which is unlikely to reduce for the foreseeable future;
- coal chain delivery system constraints (ie, the Goonyella coal chain delivery system is not able to supply coal from northern Bowen Basin coal mines into and through the Terminal in a way that meets demand);
- insufficient System Capacity to match high vessel arrival rates reflecting the high demand; and
- the lack of a capacity management mechanism to match vessel arrivals with System Capacity.

DBCTPL in this authorisation application does not wish to allocate any blame on any particular aspect of System Capacity — the purpose of the QMS is to address the economic inefficiency arising from the current disconnects in the Goonyella coal chain until System Capacity can be expanded throughout the coal chain and is intended to be a workable solution on an interim basis to avoid the inefficient expenditure of hundreds of millions of dollars on demurrage.

1.5 Proposed solution

The Terminal is leased from the Queensland State Government by the Prime Infrastructure Group ("**Prime**"). DBCTPL under contract from Prime operates the Terminal. DBCTPL is proposing to implement the QMS to operate the Terminal and co-ordinate System Capacity more effectively.

The DBCTPL Board of Directors has approved the adoption of principles (included as Attachment A to this submission), which will be used to draft the amended Terminal Regulations. Detailed operational provisions to be included in the Terminal Regulations providing for the operation of the QMS are currently being drafted involving extensive stakeholder consultation. DBCTPL hope to have them finalised over the next two weeks.

These Terminal Regulations will operate in conjunction with the existing take or pay contracts for coal loading ("**User Agreements**") between coal companies ("**Users**") and Prime.[1]

The QMS is intended to work in general terms as follows:

- DBCTPL will engage an independent expert to assess and determine System Capacity, and to the extent that coal producers' combined annual contract tonnages under their User Agreements ("**Annual Contract Tonnages**") exceed that declared System Capacity (as they are expected to), producers will be given a pro rata reduction of their Annual Contract Tonnages for each month or other equivalent relevant period so there is equity in the allocation of System Capacity;

- DBCTPL will not be required to load a vessel for coal loading that is nominated beyond the relevant coal producer's coal loading entitlement based upon their Annual Contract Tonnage and loading allocation ("**Allocation**");

- producers who underuse Allocation may be subject to physical compensation (where they lose Allocation, which is distributed pro rata among remaining producers, in the following period) and the existing take or pay obligations under User Agreements ;

- it is being contemplated that after the pro rata Allocations have been set, producers will be able to participate in Allocation auctions where they can offer some or all of their Allocation to bidders, or themselves bid on others' Allocation to facilitate efficient transfer of Allocation;

- producers can also trade Allocation, either by private arrangements between themselves or facilitated by DBCTPL in an open and transparent manner;

[1] The User Agreements and the terminology associated with them are not dealt with in detail in this Submission as the Commission is familiar with these terms from other recent industry matters.

- the Terminal Regulations will include flexibility provisions and appropriate physical and financial incentives to promote efficient usage of entitlement. In particular, there will be various mechanisms built into the functioning of the QMS that allow producers flexibility in the amount above or below their Allocation they can ship in a particular period; and

- the QMS will not operate at any time that demand does not exceed System Capacity for a sustained period.

A Goonyella Coal Chain Improvement Program funded by Terminal coal producers, resourced by an independent consulting firm (supported by stakeholder personnel) and led by a Steering Committee of industry stakeholders has been underway since last year to establish a common understanding of the Goonyella coal chain and initiate both short term and medium term efficiency initiatives to streamline and optimise coal chain efficiency and throughput.

It is important to note that the QMS will not reduce the export capacity of the Terminal or the Goonyella coal chain. While there will be a pro rata reduction in the amount of coal DBCTPL will accept at the Terminal from any coal producer (ie a reduction in Allocation based on take or pay under a User Agreement), it will not mean that the coal chain will operate at anything less than full System Capacity or that exports will be reduced. Indeed, the existence of the User Agreements will mean that all existing System Capacity will be fully utilised with existing commercial incentives to ensure full use.

In addition, there will always be a working queue of some 10-15 vessels to ensure all loading berths are fully utilised. Coal supplies in the Bowen Basin are also substantial so that there will not be a shortage of coal to load.

The QMS is not designed to be a permanent solution. Capacity expansion in the coal chain, including the Terminal, is the most appropriate solution to capacity constraints as it increases the amount of coal that can be exported. However, until there is such an expansion or demand abates, the QMS is the most appropriate solution to ensure that, without reducing aggregate coal exports, the vessel queue is maintained at a reasonable working length and coal producers are not exposed to substantial, economically inefficient, dead-weight demurrage charges.

The owner of the Terminal is not DBCTPL and capacity expansion at the Terminal is ultimately outside of the control of DBCTPL and as such there can be no argument that the QMS stultifies in any way the need for that expansion. The desire for the expansion of coal chain System Capacity by shareholders in DBCTPL is a matter of public record.

1.6 No impact on competition in Australia and significant public benefits

The QMS is designed to facilitate, in an equitable and transparent manner, the allocation of System Capacity by DBCTPL to permit coal producers to manage the length of the vessel queue to that of an efficient operating queue with no decrease in overall coal exports.

The operation of the QMS is unlikely then, in times where demand outstrips capacity, to affect competition between producers for export tonnes or between the Terminal and other facilities for ship loading services. Nor is the QMS likely to reduce exports.

In terms of competition dynamics, coal producers will continue to compete against each other for overseas coal exports. It may be that, in certain circumstances, some individual coal producers might be able to ship all their Annual Contract Tonnage in the absence of the QMS. This would not be a result of greater efficiency, but of over-representation in the vessel queue compared to other producers. The capacity constraints necessarily lead to a "tragedy of the commons" where, in the absence of the QMS, coal producers will simply continue to arrange more and more vessel arrivals, even in the face of clear evidence that the coal chain cannot meet all those orders in an efficient and timely manner.

It is considered that provisions within existing User Agreements will facilitate commercial implementation of the QMS. However, any contractual issues as between any producers and any other party are quite separate to the statutory immunity under the TPA that is being sought under the authorisation.

In addition, the authorisation application is not intended to affect the review by the Queensland Competition Authority ("**QCA**") in relation to the Terminal. While that matter is considered and System Capacity is insufficient, the QMS is an interim and initial step in seeking to efficiently use available resources without affecting the status quo.

In terms of capacity expansion, the QMS will not prevent or delay the planning and implementation of System Capacity expansion in the coal chain as a long-term solution to the current capacity constraints.

The primary function of the QMS is to assist DBCTPL to facilitate both the reduction of the length of the vessel queue and its maintenance at a workable length. It will allow DBCTPL to achieve and efficiently optimise the available System Capacity, bearing in mind the existing coal chain delivery system constraints.

By having an immediate impact in reducing the current vessel queue and maintaining it at a workable length, the QMS will result in a number of substantial public benefits, including:

- saving significant amounts of demurrage Australian-based coal producers would otherwise have to pay to foreign ship owners (in the order of A$350 million by the end of 2005 assuming current trends in shipping queues continue, taking into account the Commission's initial review period and the period of time required to reduce the vessel queue). Demurrage charges are a dead-weight loss, and economically inefficient. Coal producers are essentially paying empty vessels to sit unproductively for lengthy periods of time. Saving these funds is a substantial public benefit. By increasing economic efficiency and reducing this impost on exports, the QMS will benefit the Australian public, and particularly the public in Mackay and Queensland, which benefits from the employment and industry of efficient coal producers;

- reducing the need for coal producers to stockpile coal (and the resultant costs);
- enhancing the competitiveness and improving the reputation of the Australian coal industry and the Bowen Basin coal producers in particular, and of the Terminal as a reliable and low-demurrage facility;
- facilitating more efficient investment decisions and potential re-investment by participants in the Bowen Basin coal industry;
- helping ensure the queue operates at a more efficient workable level;
- providing certainty to producers regarding the volume and timing of coal they can ship (vessel schedules), which will enable producers to manage production more efficiently as well as providing increased certainty for customers in shipments;
- operating a more efficient vessel queue in an environmentally significant region adjacent to the Great Barrier Reef Marine Park; and
- allowing a transition to a long term solution encompassing timely investment in System Capacity.

1.7 Need for urgent interim authorisation

Because producers are paying substantial deadweight demurrage charges at the moment, and will continue to do so until the QMS is implemented, DBCTPL is requesting an urgent interim authorisation to allow it to prepare for the implementation of the QMS and then commence its operation as soon as practicable.

From an authorisation perspective, the position at the Terminal is relatively clear cut. The QMS will save substantial deadweight demurrage costs in the order of A$350 million by the end of 2005 and even if it minimally changes any individual coal producer's exports, the actual level of exports for Australia will remain the same. A pro-rata reduction in Allocation is the most equitable, transparent and fair in the circumstances for all coal producers. The additional safeguards and checks and balances included in the QMS further ameliorate the position until System Capacity can be expanded.

In any event, granting interim authorisation will not preclude the Commission from denying authorisation should it have any concerns as to the balance between detriment and benefit once it has considered the application fully. The effects of granting interim authorisation are not irreversible.

As a final matter, it is noted that the QMS will ameliorate the public "hot house" environment of the vessel queue to ensure appropriate commercial and public decisions are made over the long term to the benefit of the Australian economy thereby facilitating the transition to a long term solution. This authorisation application is therefore respectful of both the QCA process and the various Government reviews of infrastructure in Australia.

1.8 Request for authorisation

For the reasons set out in this submission, DBCTPL therefore requests that the Commission grant authorisation of the QMS until 31 December 2008, a reasonable period after the current estimation of increased Terminal capacity, allowing time for delays and the need to improve capacity in other parts of System Capacity such as rail. Demand is likely to continue to outstrip capacity during this period (and, in any event, even if it does not, the QMS is designed not to operate when demand is forecast to reduce to near or below System Capacity). Authorising the conduct for this period will allow coal producers to continue to ship as much coal as possible, without being exposed to substantial demurrage charges, while awaiting infrastructure investment and capacity improvements in the Goonyella coal chain.

1.9 Structure of submission

This submission is divided into the following sections:

Section 2 — sets out further information on the Bowen Basin coal industry, the owner and operator of the Terminal and the operation of the Terminal;

Section 3 — sets out further information on the operation of the QMS;

Section 4 — sets out further information on the substantial public benefits that result from the QMS;

Section 5 — sets out further information on DBCTPL's request for urgent interim authorisation;

Section 6 — sets out further information on the proposed length and coverage of the authorisation;

Section 7 — sets out a brief conclusion.

We now discuss these issues in more detail.

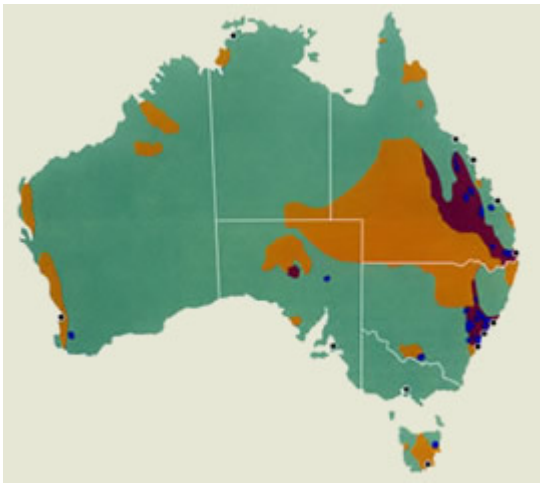
2 Background information

2.1 The Queensland coal industry

Introduction

Queensland and New South Wales account for over 95% of Australia's black coal production. In particular, the Bowen Basin in Queensland and the Sydney Basin in New South Wales account for the vast majority of coal produced in Australia.[2] As Figure 1 below illustrates, a vast amount of the substantial coal resources in Australia are contained in central and south-eastern Queensland.

Figure 1: Australian black coal resources



Source: www.australiancoal.com.au

Types of coal in Queensland

Queensland contains more than 30 billion tonnes of identified resources of black coal of which approximately one third is identified as coking coal and the remainder classed as thermal coal.

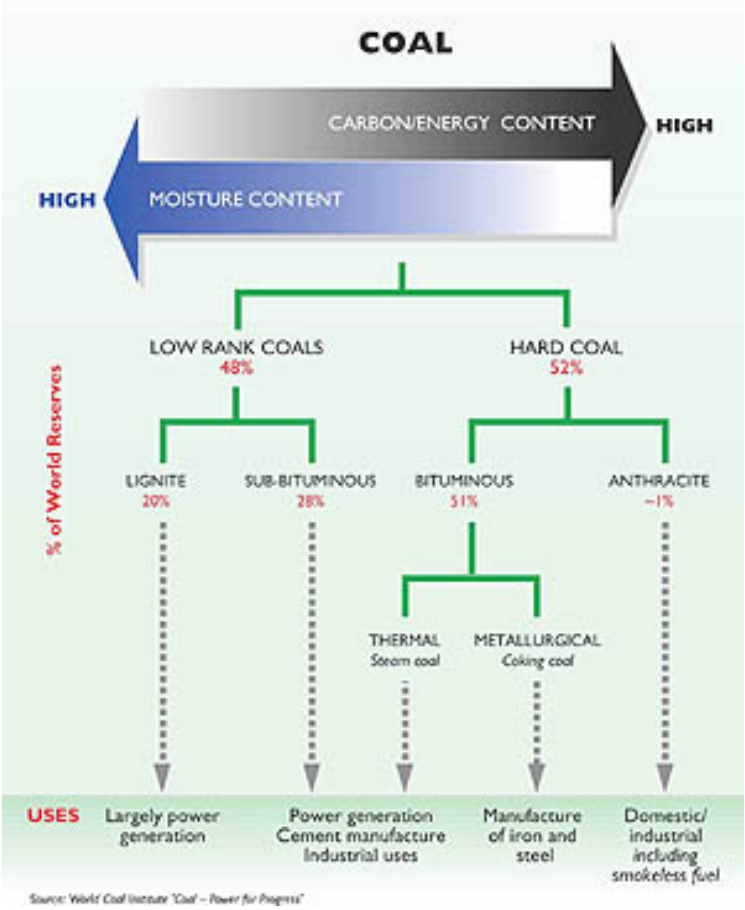
[2] Productivity Commission Report into the Australian Black Coal Industry, p.C4.

Coking coal (or "metallurgical coal") is coal that can be usefully converted into coke that is strong enough to resist pressure and breakage. Coking coal is primarily used in the production of iron and steel. Australia is the world's largest exporter of coking coal.[3] This category includes other coals used in steelmaking, such as semi-soft coking coal and PCI coal. PCI coal is finely ground and injected into the base of a blast furnace, partly replacing coke.

Thermal coal (or "steaming coal") is particularly suitable for boiler use and is mainly used in electricity generation.

Figure 2 below provides a general outline of coal types and their uses.

Figure 2: Coal Types and uses



Source: World Coal Institute, www.wci-coal.com

Queensland coal production and exports

During 2003-2004, Queensland produced a record 160.06 million tonnes (Mt) of saleable coal and of this, 134.98Mt was exported to 34 countries world-wide, valued at A$7.2 billion (free on board). Of these exports, 90.19Mt (67%) was coking coal and the remaining 44.79Mt (33%) was thermal coal.[4]

[3] World Coal Institute, www.wci-coal.com

[4] Queensland Government: Department of Natural Resources and Mines, Queensland Coal Facts 2003-04 available at http://www.nrm.qld.gov.au/mines/coal/pdf/coalfacts.pdf

Japan has traditionally been Australia's major market for coking coal, and while remaining the main consumer of Australian export coking coal, this has decreased over recent years with the industrialisation of other Asian countries. Over 90% of Australia's export thermal coal is destined for Asia, with Japan, Korea and Taiwan as major buyers.[5] The top eight purchasers of Queensland coal in 2003-2004 are set out in Table 1 below.

Table 1: Top 8 purchasers of Queensland coal in 2003-04

Country	Quantity (million tonnes)
Japan	50.06
Korea	21.38
India	12.83
Taiwan	6.55
UK	5.47
Brazil	5.42
France	4.69
China	4.22

Source: www.nrm.qld.gov.au

Coal is traditionally sold to customers under long term contracts and the majority of coal from the Bowen Basin is shipped through the Terminal on Free on Board (FOB) terms. Under FOB terms, the buyer charters the vessel, however the producer is responsible for paying any demurrage charges incurred, based on the waiting time of the vessel, the contract loading rate and the demurrage rate specified for the vessel and/or provided for in the coal sales contract.

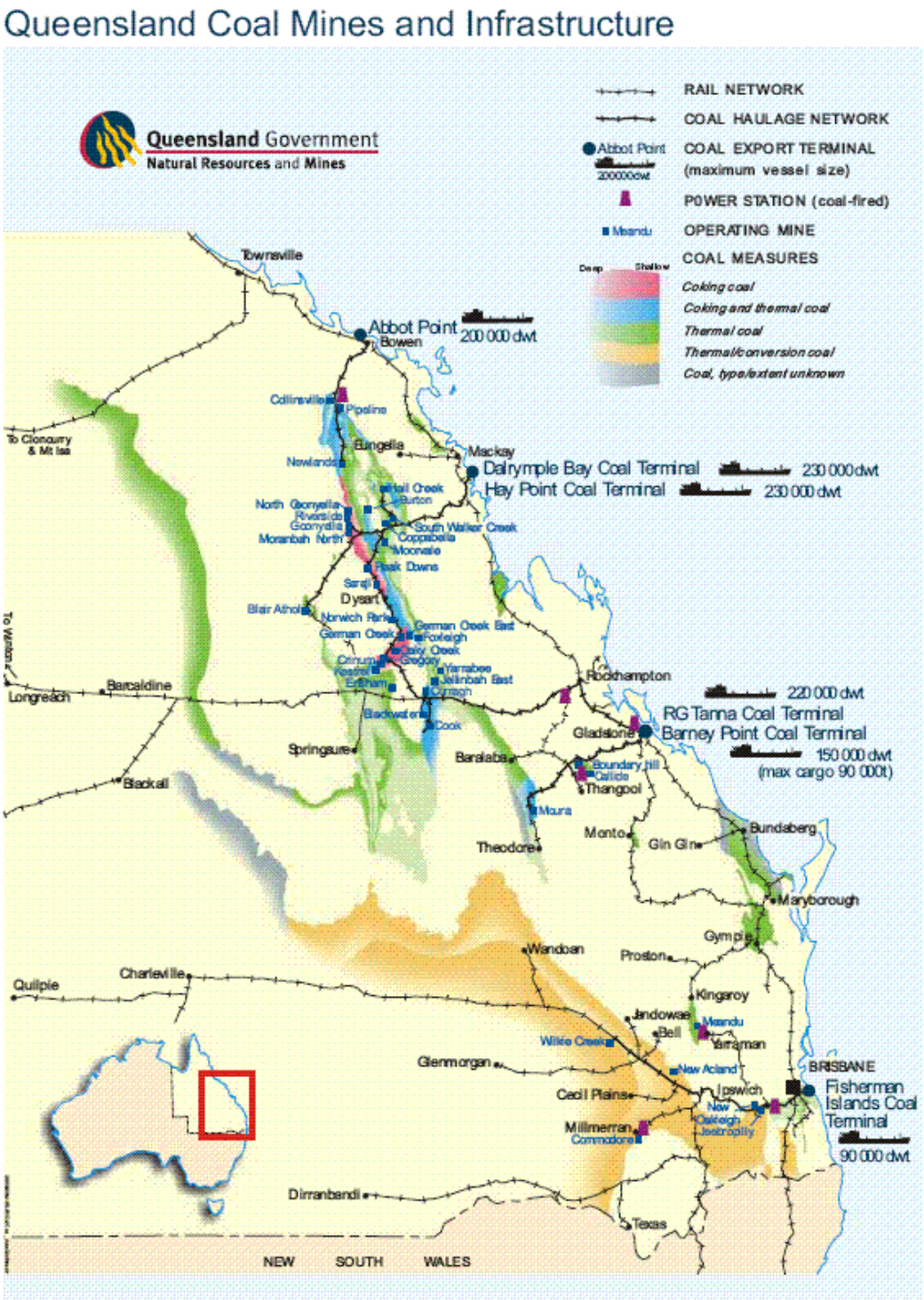
Most of the coal shipped from the Terminal is sold on a long term basis, although some coal is sold on the spot market.

2.2 The Bowen Basin

The Bowen Basin area extends over approximately 60,000 square kilometres of Central Queensland from the town of Collinsville in the north to Theodore in the south, as set out in the map in Figure 3 below.

[5] Productivity Commission Report into the Australian Black Coal Industry, p.C8.

Figure 3: Queensland Coal Mines and Infrastructure



Source: http://www.nrm.qld.gov.au/mines/coal/pdf/coalfacts.pdf

The Bowen Basin coal reserve is the largest in Australia and the 34 operational coal mines in the area extract over 100 million tonnes annually, which represents approximately 83% of Queensland's coal production.[6] The basin is the site of large, open cut mines and generates most of Queensland's $6.7 billion black coal export earnings.[7]

6 www.bowenbasin.cqu.edu.au

7 "Research blazes trail to Bowen Basin coal", 19 February 2003, www.csiro.com.au

2.3 Queensland port facilities

Queensland coal destined for export markets is handled through six coal terminals at four deepwater ports along the Queensland coast. From north to south these ports are:

- Port of Abbot Point, (Abbot Point Coal Terminal);
- Port of Hay Point (Hay Point Coal Terminal and Dalrymple Bay Coal Terminal);
- Port of Gladstone (RG Tanna Coal Terminal and Barney Point Coal Terminal); and
- Port of Brisbane (Fisherman Islands Coal Terminal).[8]

The Dalrymple Bay, Hay Point and RG Tanna coal terminals collectively handle approximately 85% of Queensland's coal exports.

2.4 Dalrymple Bay Coal Terminal

The Terminal is located at the Port of Hay Point and is leased from the Queensland State Government by the Prime Infrastructure group ("**Prime**") (the ownership and operation structure of the Terminal is discussed further below).

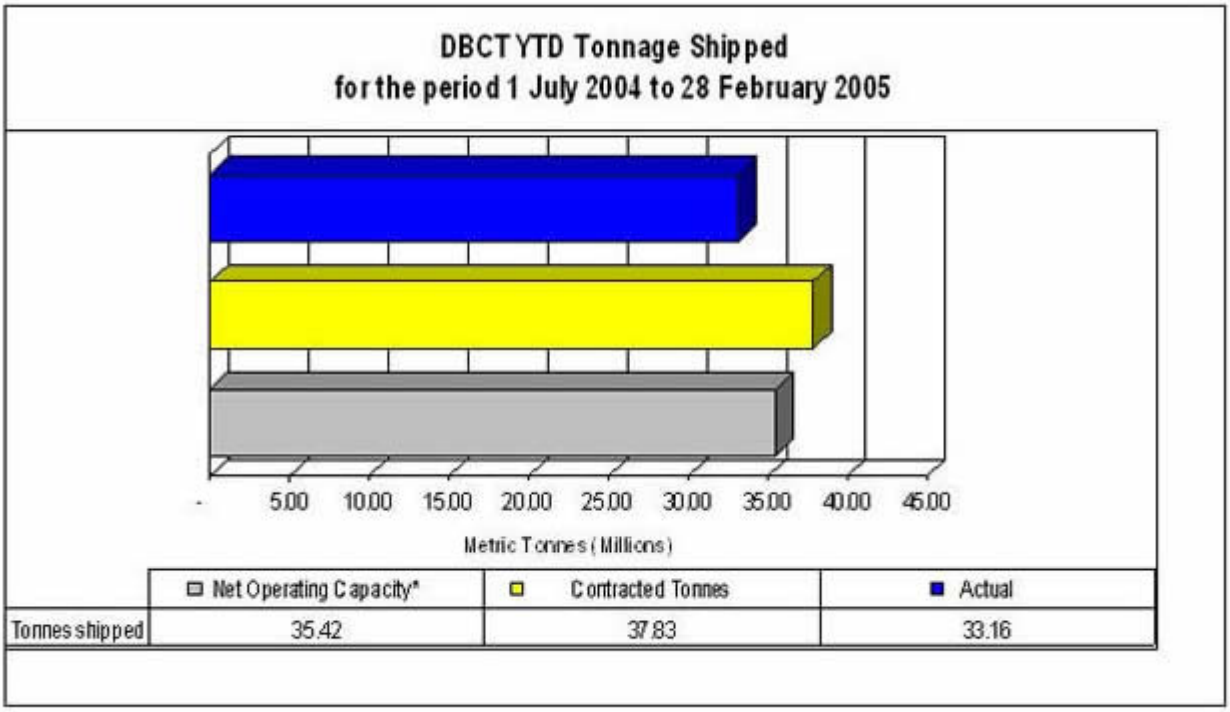
The Terminal is a common user coal export facility and the largest export coal terminal in Queensland, handling the products of northern Bowen Basin mines. The Terminal has three berths, three ship loaders (capacity 7,200 tonnes/hour) and encompasses purpose-built rail in-loading facilities and on-shore stockpile yards. The Terminal's wharf is 3.8 km offshore to permit ship loading in deep water.

The Terminal has a stated throughput capacity of approximately 54 million tonnes per annum (mtpa)[9] and in 2003-04, had total throughput of 43,592,396 tonnes. Figures 4 and 5 below illustrate recent tonnage shipped through the Terminal and the relationship between contracted tonnes and actual tonnes shipped through the Terminal.

[8] www.nrm.qld.gov.au

[9] www.primeinfrastructure.com.au.

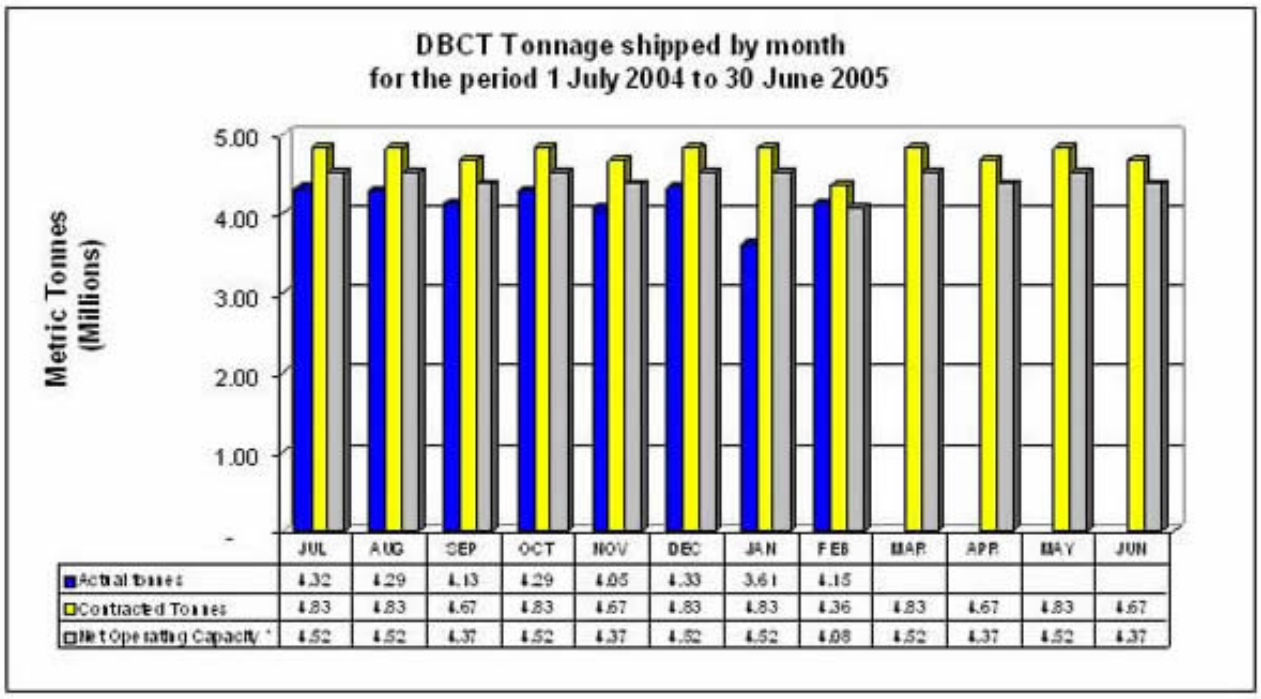
Figure 4: Tonnage shipped at Terminal YTD 04/05



* adjusted for the loss of RL1 (i.e. 95% capacity)

Source: www.primeinfrastructure.com.au

Figure 5: Monthly tonnage shipped at Terminal YTD 04/05



* adjusted for the loss of RL1 (i.e. 95% capacity)

Source: www.primeinfrastructure.com.au

Table 2 lists the mines supplying the Terminal.

Table 2: Mines that supply the Terminal

Mine	Owner	Operator
Blair Athol	Joint venture between Rio Tinto Coal Australia Pty Limited (57.2 %), Leichhardt Coal Pty Limited (31.4 %, which is owned by UniSuper, Rio Tinto Coal Australia and the Electric Power Development Co Ltd of Japan), and the Japanese power utilities EPDC (Australia) Pty Ltd (8 %) and JCD Australia Pty Ltd (3.4 %).	Rio Tinto Coal Australia Pty Ltd
Riverside	BHP Mitsui Pty Ltd	B.M Alliance Coal Operations Pty Ltd
German Creek	Anglo Coal Australia Pty Ltd	Anglo Coal (Capcoal Management) Pty Ltd
Oaky Creek	Xstrata plc	Xstrata Coal Queensland Pty Ltd
North Goonyella	Peabody Energy Australia Coal Pty Ltd	North Goonyella Coal Mines Pty Ltd
Burton	Peabody Energy Australia Coal Pty Ltd	Thiess Pty Ltd
Moranbah North	Anglo Coal Australia Pty Ltd	Anglo Coal Australia Pty Ltd
Hail Creek	Joint Venture - Rio Tinto Coal Australia (82%), Nippon Steel Australia 8%, Marubeni Coal (6.66%) and Sumisho Coal Development (3.34%).	Rio Tinto Coal Australia Pty Ltd
Foxleigh	CAML Resources Pty Limited (74%), Bowen Basin Investments Pty Ltd (13%), Itochu Coal Resources Australia Ltd (10%) and Lake Lindsay Investments Pty Ltd (3%).	Foxleigh Mining Pty Ltd
Coppabella	Coppabella JV (principal beneficial owner is Macarthur Coal (73.3%)).	Australian Premium Coals Pty Ltd
Moorvale	Macarthur Coal	Australian Premium Coals Pty Ltd

Source: www.bowenbasin.cqu.edu.au & www.pcq.com.au and DBCTPL

The main exporters through the Terminal in the financial year 2004/2005 are set out in the confidential Attachment E.

The location of these coal mines is set out in Figure 6 below.

Figure 6: Operating Coal Mines in the Bowen Basin

Source: www.bowenbasin.cqu.edu.au

Ownership/operation structure

The Queensland Government (through the company DBCT Holdings Pty Limited) is the owner of the Terminal. Prime became the lessee of the Terminal under a long term lease arrangement from the Queensland Government in September 2001. The primary lease is to the company Prime Infrastructure (DBCT) Investor Services Limited, which then subleases the Terminal to the company Prime Infrastructure (DBCT) Management Pty Limited.

The holding company of Prime is a diversified investment vehicle listed on the Australian Stock Exchange, with an estimated market capitalisation of approximately $775 million. Prime comprises:

- Prime Infrastructure Management Limited ("**PIML**"), an Australian public company;
- Prime Infrastructure (DBCT) Trust ("**PIT**"), an Australian trust of which Prime Infrastructure (DBCT) Investor Services Limited is the responsible entity; and
- the respective wholly-owned entities of each of PIML and PIT.

Prime's foundation asset is the Terminal. Prime has since acquired interests in power generation assets in New South Wales and Victoria and a 50% interest in Global Wind Partners, with wind generation assets in South Australia and Western Australia. Prime also holds a significant interest in electricity and gas distribution networks in New Zealand.[10]

DBCTPL is the operator of the Terminal. DBCTPL is responsible for the day-to-day operations and maintenance of the Terminal pursuant to a contract with Prime Infrastructure (DBCT) Management Pty Limited. The operations and maintenance contract is currently effective until March 2009 with the capacity for a further extension until 2014. DBCTPL is able to request a further extension beyond 2014 although Prime is under no obligation to grant this extension.

DBCTPL is owned by the following Terminal users:

- Blair Athol Coal Pty Ltd [Rio Tinto];
- Anglo Coal (Capcoal Management) Pty Ltd;
- Anglo Coal (Moranbah North Management) Pty Ltd;
- BHP Mitsui Coal Pty Ltd;
- Mount Isa Mines Limited [Xstrata];
- Burton Coal Pty Ltd [Peabody]; and
- Foxleigh joint venturers.

The major functions performed by DBCTPL at the Terminal are:

- co-ordinating the railing of coal from the mine sites to the Terminal (in conjunction with Queensland Rail);
- managing and operating train unloading, stockpiling and ship loading activities within the Terminal;
- preparing shipping documentation (bills of lading, manifests. statements of fact etc) on behalf of the mines shipping the coal; and
- maintenance and minor engineering functions.[11]

The handling of coal at the Terminal by DBCTPL for producers is governed by Terminal Regulations. Each producer has a User Agreement with Prime giving them the right to have their coal shipped through the Terminal. Producers agree to abide by the Terminal Regulations as part of their User Agreement with Prime.

[10] Prime Infrastructure Annual Report 2004.

[11] www.comlabs.com.au

The current Terminal Regulations are set out in Attachments B and C. It is proposed by DBCTPL and producers to implement the QMS through recommending to Prime appropriate amendments to the Terminal Regulations.

2.5 Queensland Competition Authority

The Terminal is declared for third party access under the *Queensland Competition Authority Act 1997 (Qld)* ("**QCA Act**"). This declaration means that Prime must not hinder or prevent access to the Terminal and must negotiate in good faith with access seekers. As part of the regulatory oversight provided by the QCA, the QCA has issued a draft determination which proposes a price cap mechanism for reference tonnages for coal loading services at the Terminal. The level of the proposed price cap is currently being disputed as Prime argues that the price cap renders further investment in port expansion at the Terminal uneconomic.

Since June 2003 the QCA has been considering a draft access undertaking in respect of the Terminal proposed by Prime. In its draft decision in October 2004, the QCA proposed to reject the draft access undertaking and has made various requests for amendments.

Queensland Rail's rail infrastructure is also regulated under the provisions of the QCA Act.

It must be noted that if the QCA process is successful in facilitating the increased investment required to expand the capacity of the Terminal, this will assist in addressing the coal chain's bottleneck issues in the long term. However, any developments as a result of the QCA process will take time to have an effect. The QMS is designed to immediately address the deadweight cost implications of the coal chain bottleneck in the short to medium term.

2.6 The process of delivering coal

The process for coal being loaded at the Terminal is as follows:

- Consistent with Terminal Regulations, DBCTPL "vets" vessel nominations, accepts vessel nominations, reviews "quality plans", co-ordinates rail delivery of coal parcels to meet the nominated vessel quality and loading plans;

- Referring to the current loading plans and the future railing plan DBCTPL allocates stockpiles at the Terminal for a particular vessel. The Terminal was originally designed to operate in "dedicated stockpile" mode. However, consistent with User requests, cargo assembly areas have been progressively established to facilitate loading of multi-cargo vessels. Following the collapse of a coal reclaimer in 2004, Users have foregone their entitlement to dedicated stockpiles and the Terminal has been operating exclusively in cargo assembly mode;

- The mines load the coal for transport to the Terminal where it is placed on the appropriate stockpiles or through-loaded direct to the ship;

- Upon completion of parcel assembly (or scheduled "on rail" delivery to the Terminal) the vessel is berthed and loading commenced.

2.7 Cause of vessel queues

Various factors

During 2004, persistent queues of vessels formed off the Hay Point coastline waiting to load coal from the Terminal. These queues were caused by a combination of the following factors:

- **System Capacity limitations** — embodied in the contractual misalignment between rail haulage and Terminal services, had not previously been highlighted due to coal producer mine production shortfalls and some elasticity in demand/supply;

- **Collapse of a Terminal coal reclaimer** — the loss of RLI (a major reclaimer) in February 2004, which is still to be replaced, means that System Capacity has been reduced by several million tonnes per annum;

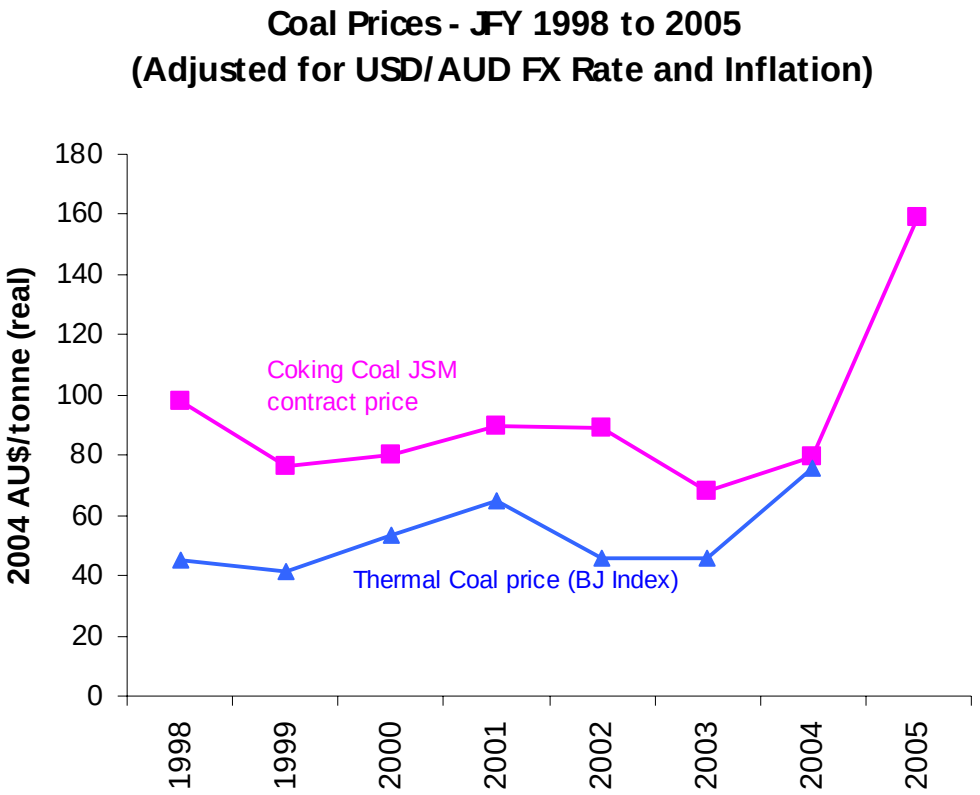
- **High vessel arrival rates** — reflecting high overseas demand for coal produced at Bowen Basin coal mines. The high vessel arrival rate has been compounded by a reduction in average vessel size, thereby increasing the number of vessels to be handled by the Terminal; and

- **Absence of a "Capacity Management" System** — following the introduction of the current form of User Agreement in 1999, which incorporated a tonnage throughput rebate, equitable allocation of rail capacity (on a monthly basis) was superseded by turn of arrival shiploading, moderated by availability of product, from mines. In other words, the way the system now allocates capacity is through vessel arrival, and there is no mechanism to align this to System Capacity.

Increased demand and prices in particular

The recent surge in steel demand, in turn related to economic growth by China and North Asia has lead to increased global demand for coking coal. Thermal coal demand has also been high. The consequence has been higher coal prices. Figure 7 shows movements in the thermal coal price and coking coal price from 1998 to 2005.

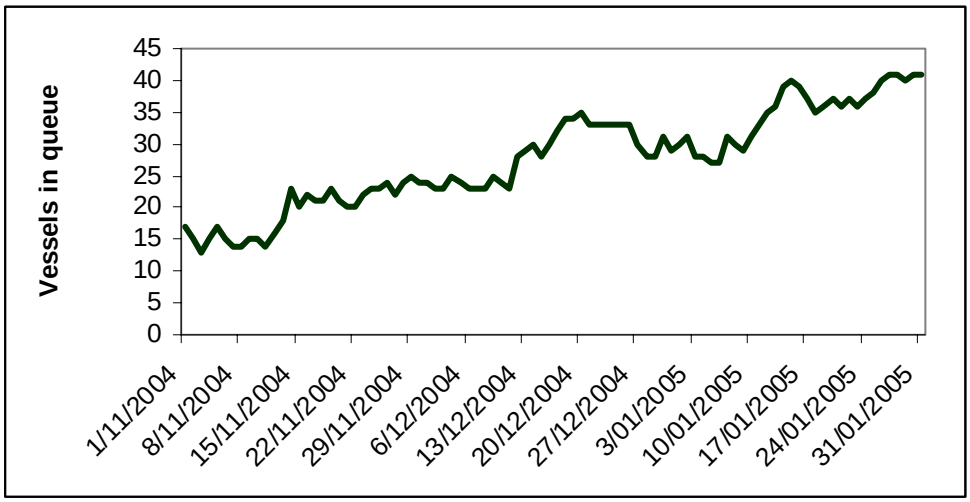
Figure 7: Movements in price of coal 1998 - 2005



Source: Xstrata

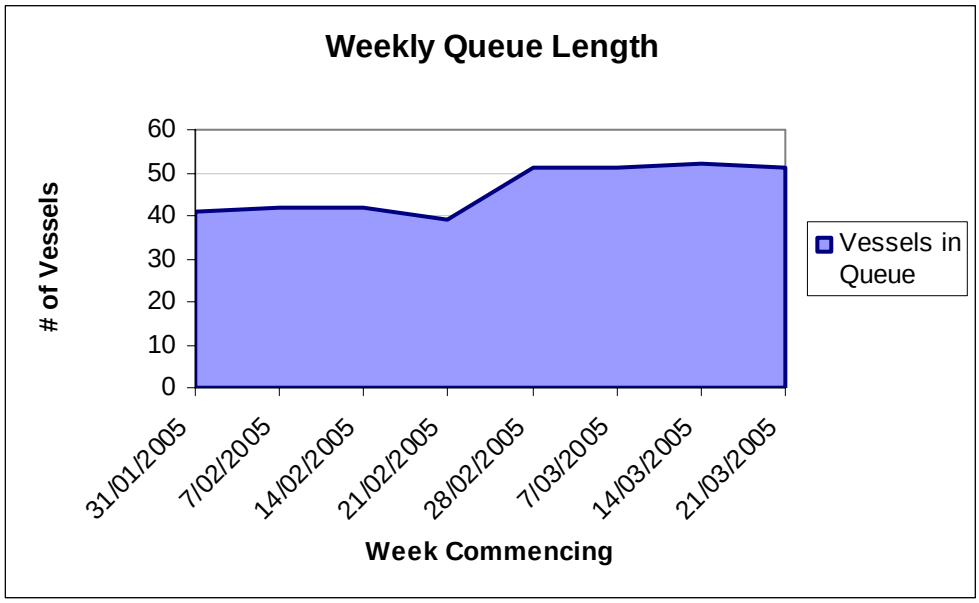
However, System Capacity has failed to increase in line with the boom in demand for export coal. Accordingly, an imbalance has emerged between System Capacity and demand at the Terminal, manifested at the Terminal by ships waiting to be loaded, causing an extensive vessel queue off the Terminal. Figures 8 and 9 show the increase in the vessel queue over time.

Figure 8: Emergence of Vessel Queue at Terminal 04/05



Source: DBCTPL

Figure 9: Recent Queue History



Source: DBCTPL

2.8 Problem of extensive vessel queues

Demurrage costs

Shipping companies charge coal producers demurrage fees for the period of time in which ships must remain idle while waiting to collect coal from the port. This cost incurred by producers represents a considerable deadweight loss. The Terminal's vessel queue has been steadily trending up in the last five months, increasing from some 15 vessels in early November 2004 to over 50 in March 2005. At this level collective industry demurrage is estimated to be A$30 million per month (some A$350 million annualised). In the absence of intervention, if the current trend continues the queue will lengthen further and collective demurrage could be as high as A$550 million for 2005.[12] This estimate excludes any detention charges paid by offshore coal consumers and any flow on impact of the queue on freight rates.

Increased costs of coal production and investment disincentive

The congestion and delays coal producers experience in their ability to access Terminal services raises coal producers' costs of doing business.

Due to System Capacity congestion restricting the amount of coal producers may ship through the Terminal, some coal producers have opted to use alternative coal terminals such as the Abbot Point Coal Terminal, in order to export more of their production. The Abbot Point Coal Terminal is 200 kilometres further north from the Terminal and as such, producers incur higher transport costs, especially considering that trains on this rail line can only transport 3,000 tonnes in comparison to the 9,500 tonne capacity of a typical train to the Terminal. Although the current high coal prices have enabled such a strategy to be financially viable for producers, such strategies by producers reflects the production and cost inefficiencies generated by the congestion at the Terminal.[13]

[12] Xstrata estimate

[13] "Macarthur skirts bottleneck", Australian Financial Review, 15 March 2005.

System Capacity limitations may also produce a disincentive for producers to undertake further investment in mining in the Bowen Basin region. New mines in the Bowen Basin have been delayed as producers assess the viability of developing mine sites which depend upon access to the Terminal and thus would be subject to delays and a restricted ability to export all mine production.[14]

As noted earlier, the reduction in vessel size experienced during the formation and sustained presence of the vessel queue has negatively impacted on Terminal capacity.

2.9 Vessel queue likely to persist/increase

DBCTPL has been advised that the high demand for coal exported from the Bowen Basin will continue at least until the end of 2008. This demand is likely to be driven largely by the economies of both China and also India, which are forecast to account for almost three quarters of the increase in coal demand in developing countries and two thirds of the increase in world coal demand.[15]

DBCTPL is advised that Prime has received bona fide user requests for additional tonnage which are well in excess of current System Capacity and immediate expansion plans.

Furthermore, prices have continued at near record levels for both thermal coal and coking coal, an indication that coal supply is still in high demand.

The next significant capacity expansion at the Terminal is the completion of the "Phase 1 Expansion (including an additional coal in-loading station and coal stacker) which is currently scheduled for completion in 2007. There are currently discussions occurring between Prime and users in respect of the necessary arrangements, but if commitment is not achieved by April this year substantial delays in completion of the scheduled expansion are possible. The current ship queue is therefore highly likely to persist until at least the second half of 2007 in the absence of the QMS. In anticipation of impacts on System Capacity associated with a "brown fields" expansion of Terminal capacity, DBCTPL is therefore requesting the authorisation extend through 2008 recognising that the QMS will not operate if demand does not exceed System Capacity.

Furthermore, the proposed QMS will only operate where demand exceeds available capacity and will not operate where excess demand does not exist for use of coal loading capacity at the Terminal and in the coal chain. In that sense, the QMS is a self-regulating system. Therefore, it can be asserted with confidence that when the QMS operates, it will be because a substantial queue would otherwise form. So while the exact length of that queue, and therefore the exact demurrage savings, cannot be predicted with precision, the fact that there are savings as a result of the proposed QMS is clear.

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[14] Macarthur Coal has reconsidered its investment plans in light of port congestion, see "Dalrymple Bay backlog continues", www.abc.net.au, 2 March 2005; "Port Delays hamper miners expansion", www.abc.net.au, 25 February 2005.

[15] Coal Industry Advisory Board Background Paper, November 2003, www.iea.org.

3 Proposed solution

3.1 Overview of proposed solution

Introduction

The QMS is designed to efficiently, equitably and transparently allocate System Capacity among coal producers according to their existing User Agreements. It is important to note that the QMS will not affect the volume of coal actually delivered through the Goonyella coal chain or the amount of coal that DBCTPL actually loads onto ships. The QMS will alleviate the need for ships to incur delays at the Terminal and, based on coal producer advice, DBCTPL estimates that this will save producers approximately A$350 million in demurrage costs for the remainder of 2005 (assuming current trends in the vessel queue continue) and will continue to save coal producers substantial demurrage charges in subsequent years when the QMS operates.

Summary of QMS

The QMS involves the following 3 key steps:

- **Step 1 -** declaration of System Capacity by an independent expert;
- **Step 2 -** equitable allocation of System Capacity to permit coal producers to manage vessel nominations; and
- **Step 3 -** management of allocations.

Important features of the QMS and contract system at the Terminal include:

- **take or pay -** a take or pay system (currently provided for by the User Agreements with Prime);
- **auction -** consideration is being given to establishing an auction system to further facilitate the efficient allocation of capacity to those that value allocation most; and
- **demand trigger -** an automatic re-set mechanism to reflect changes in System Capacity and User Agreement tonnage.

It is intended that the QMS be implemented by amending the Terminal Regulations as discussed below.

The QMS is an efficient, equitable and transparent system in which all producers may participate equally. As it has market-based features, the QMS allows greater commercial alignment of demand, supply and System Capacity. The take or pay component, creates strong incentives to ensure that all capacity in the coal chain is used or returned to other producers with additional demand at the earliest opportunity.

Expansion - the long term solution

The System Capacity bottleneck and vessel queue problem is one which requires a long term solution. Expansion is needed in all elements of the Goonyella supply chain to address the current imbalance between demand and capacity.

A summary of the current proposals for expansion in the coal chain is set out in Attachment D.

As DBCTPL is the operator of the Terminal only (not the owner) it does not currently have the direct ability to ensure investment in the expansion of infrastructure capacity. However, DBCTPL continues to actively promote and encourage expansion of the Terminal and the coal chain.

As part of DBCTPL's efforts to work with the industry on improving the Goonyella coal chain, DBCTPL, in conjunction with Prime, is seeking to encourage alignment of port and above-rail contracts to achieve efficient utilisation of below-rail infrastructure, permitting a definitive timetable for rail infrastructure upgrades to be submitted to the QCA by Queensland Rail – Network Access. DBCTPL will also work with other participants in the Goonyella supply chain to lift load point capabilities, increase train / day peaking capacity to match cargo build times of all load points, reduce load rate variability consistent with vessel arrival patterns.

DBCTPL's objective is to achieve alignment of interest between Goonyella coal chain stakeholders to facilitate an evolving and adaptable world class supply chain efficiently and economically delivering Bowen Basin coal to the international market.

This alignment of interest will enable DBCTPL to co-ordinate more effectively the processes for loading vessels having regard to exporters' Annual Contract Tonnages, available rail capacity and vessel scheduling and will assist in preventing congestion and vessel queues at the Terminal from arising in the future.

Timing

DBCTPL does not anticipate expansion to be operational until at least late 2007. Accordingly, the QMS is needed until at least that time (and assuming delays, into 2008) to ensure vessel queues and high demurrage costs are reduced in the short and medium term.

3.2 Annual Contract Tonnages of producers

Introduction

Coal producers each have agreed Annual Contract Tonnages under their User Agreements with Prime for a varying number of financial years beyond 2005. These Annual Contract Tonnages were agreed before the queue developed and before the QMS was contemplated. They are, therefore, an appropriate measure of each producer's forecast demand throughout the proposed period of the QMS' operation. Under the provisions of their User Agreements, coal producers provide Prime with quarterly forecasts of demand for Terminal services.

Both cumulative Annual Contract Tonnage and forecast demand currently exceed System Capacity. A Stakeholder Operations Monthly Meeting ("**SOMM**") also reviews both system capacity and demand performance / forecasts.

The QMS incorporates the following key accountability measures:

- **take or pay -** coal producers' User Agreements currently attract a take or pay obligation on Annual Contract Tonnages, payable to Prime; and

- **physical and financial compensation -** there may be physical and financial compensation mechanisms established to encourage usage of allocations.

3.3 Capacity declaration by independent expert

An independent expert, in consultation with DBCTPL, Hay Point Services (BMA) and Queensland Rail will periodically "declare" the capacity of the System Capacity and the resulting desired volume of the Terminal operational queue. The declared System Capacity will be based on actual historical performance, adjusted for known maintenance and forecast performance.

The independent expert will ensure the rationale for the decision (together with relevant supporting information) is made publicly available. This will ensure transparency and adds a further check on the validity of the declaration.

DBCTPL will continue to monitor coal chain performance on a regular basis and recommend to the independent expert any necessary adjustments to the declared capacity and operational queue (eg release additional capacity, if possible, to reflect capacity improvements). The independent expert may then issue a revised capacity declaration. Consistent with the provisions of its operating and maintenance contract with Prime, DBCTPL with other industry participants will continue to pursue initiatives to enhance the performance and efficiency of the Goonyella coal chain.

3.4 Demand adjustment and allocation

The demand adjustment mechanism contained in the QMS will apply if, following the System Capacity declaration process, demand for Terminal services (ie the aggregate Annual Contract Tonnages of all users) exceeds the declared System Capacity.

Where demand for Terminal services is less than the declared System Capacity each coal producer will be provided with an allocation equal to its Annual Contract Tonnage.

If demand for Terminal services exceeds the declared System Capacity for any period, a pro rata reduction based on Annual Contract Tonnages for each producer will be calculated as is necessary to balance demand with available capacity. Each producer will then be provided with a pro rata allocation. Each producer may also receive an additional "conditional allocation" for each period.

DBCTPL will not load any vessel for a producer that exceeds the available loading allocation for that producer.

The QMS only allocates capacity to coal producers who have User Agreements with Prime. No traders have such a contract with Prime.

It is also contemplated that flexibility provisions (such as conditional allocation) may be introduced as part of the QMS.

3.5 Management of allocations

Distribution of an increase or decrease in capacity

The QMS also incorporates a method of distributing any increases in System Capacity. If DBCTPL in consultation with the independent expert determines that there has been any increase in System Capacity, then the appropriate additional allocation will be distributed on a pro rata basis.

If there is a decrease in available capacity (eg as a result of equipment failures or unscheduled maintenance), then all producers' allocations will be decreased on a pro rata basis. Notice of any decrease in allocation will be provided.

New entrants

New entrants (those who enter into a User Agreement with Prime) will not be required to accept allocation until their mine has commenced and is ready to begin shipping coal, but will then be accommodated on the same basis as all other Users.

New entrants will not participate in any auction prior to the commencement of their User Agreement. New entrants will be required to demonstrate their ability to use allocation before taking up allocation.

New entrants' Annual Contract Tonnages are pro rata adjusted using a revised capacity reduction factor which accounts for the additional demand. All other coal producers will experience a pro rata reduction (according to their allocation for the relevant period) to release allocation to be distributed to the new entrant.

Accordingly, the QMS will not create any barriers to entry or expansion. To the contrary, it actually facilitates new entry as existing participants are effectively required to "give way" to new entrants and new entrants are not required to accept a take or pay obligation until their operations commence.

3.6 Auction and allocation trading

Demand reduction auction

Consideration is being given to establishing a demand reduction auction process as part of the QMS. Such an auction process would provide a mechanism for producers to increase or decrease their allocation by bidding with other auction participants to effectively buy or sell loading allocation around the pro rata position.

The auction process is economically efficient because it allows those who place a higher value on loading allocation (buyers) to acquire it from those who place lower value on the allocation (sellers).

Transfer of allocation

Consistent with provisions of their User Agreements, coal producers will be entitled to transfer or exchange their loading allocations. Transfers and exchanges enable the redistribution of allocations to match demand and reduce the likelihood of unused allocation. They also facilitate the efficient allocation of loading capacity and optimal utilisation of the Terminal.

DBCTPL will facilitate transfers and exchanges to promote liquidity in allocation trading (eg via an on-line marketplace to enable anonymous posting of bids and offers for allocation). Producers will also be able to engage in bilateral trades. DBCTPL will not be a party to any commercial arrangements between coal producers.

Pooling allocation

Coal producers with more than one User Agreement with Prime will be given separate loading allocations for each User Agreement and corresponding Annual Contract Tonnage. In this circumstance a user may pool these allocations.

3.7 Hearing of disputes

In order to increase the transparency of DBCTPL's operation of the QMS, it is proposed that a dispute resolution process be created. Parties dissatisfied with the actions or decisions of DBCTPL in respect of the QMS could have the matter reviewed by an independent administrator. The administrator is to be granted the authority to determine such disputes consistent with the provisions of the User Agreements.

3.8 Amendment of Terminal Regulations

It is intended that the basic framework for the QMS be implemented by amending the existing Terminal Regulations. Under the operation and maintenance contract between DBCTPL and Prime, DBCTPL is able to recommend that Prime make such an amendment.

The DBCTPL board has approved the adoption of principles which will be used to draft the amended Terminal Regulations (included as Attachment A to this submission). Detailed amendments to the Terminal Regulations providing for the operation of the QMS are currently being drafted and DBCTPL hopes to have them finalised over the next two weeks.

4 Analysis of public benefit and detriment

4.1 Benefit: reducing demurrage

Substantial dead-weight demurrage

As has been stated above, it is estimated that coal producers using the Terminal will pay A$550 million in demurrage charges in 2005 for vessels queued at the Terminal awaiting ship loading.

These charges are economically inefficient dead-weight losses. Coal producers are paying substantial sums for empty ships to sit idle off the coast of Australia.

Demurrage costs of this magnitude will continue to be incurred by coal producers as long as System Capacity is less than demand. This is expected at least until the earliest date for Terminal capacity expansion in late 2007. On-going "brown fields" expansion of Terminal capacity and the need for complementary expansion in other parts of the coal chain could see System Capacity constrained through to the end of 2008.

Substantial savings

It is estimated that implementation of the QMS may be able to limit demurrage in 2005 to less than A$200 million. Therefore, based on an estimated A$550 million payable in demurrage for 2005 on current trends - if the QMS proceeds, savings of approximately A$350 million in demurrage costs are achievable.[16] Further, substantial savings are then likely in later years.

Public benefit

The Commission can therefore be confident that the QMS will result in substantial savings of demurrage compared to the counter-factual of an increasing vessel queue. This will reduce the economic inefficiency inherent in demurrage charges. As the Commission has acknowledged in its authorisation of a capacity distribution system at the Port of Newcastle, this is a substantial benefit.[17] It reduces the cost of exporting coal and the amount of time coal vessels sit unproductively in a queue.

[16] Xstrata estimate

[17] Commission Final Determination, Applications for Authorisation A90906, A90907, A90908 lodged by Port Waratah Coal Services Pty Ltd (9 July 2004), p.60

This is a public benefit because, despite the immediate benefit being a cost saving to coal producers, this has a flow-on benefit for the broader Australian community, particularly in Mackay and Queensland. Each of the coal producers employs Australians, and requires service industries in the region that employ Australians.

Furthermore, the Commission has in the past indicated that an application for authorisation that relates solely to exports inherently involves benefits and detriments that are public in nature.[18]

4.2 Benefit: reducing stockpiling costs

Reducing the vessel queue will give exporters and buyers of coal greater certainty as to when a particular shipment of coal will be loaded and how much coal they will be able to load in a month. Producers can then use this greater certainty to better manage their production and stockpiling of coal. This will allow them to reduce stockpiling costs below what would be the case with the uncertainty of the vessel queue.

The public benefits from the reduction of economic inefficiency caused by stockpiling costs in the same way as it benefits from the reduction of inefficient demurrage charges.

4.3 Benefit: improving the Terminal's reputation

While the vessel queue is a result of strong continuing demand for Bowen Basin coal, the long vessel queue is nevertheless having a negative impact on the reputation nationally and internationally of the coal producers and the Goonyella coal chain, including the Terminal. There has been significant media scrutiny and commentary about the problems of vessel queues at the Terminal.

International coal buyers, faced with uncertainty about how long it will take for their coal to be loaded at the Terminal because of a long vessel queue, may lose confidence in the Terminal's coal producers and be more likely to consider alternative sources of supply, including from other countries. This would be aggravated without the QMS, because the queue would persist and increase.

There are public benefits from the Goonyella coal chain (including the Terminal) and the Bowen Basin coal producers having a strong international reputation as efficient, timely and low-demurrage exporters.

4.4 Benefit: more efficient investment and re-investment

With a greater ability to predict annual costs and revenue, coal producers are better placed to make long-term plans and decisions, particularly with respect to production and investment. This in turn will allow the producers to operate more efficiently.

In particular, the amounts saved in demurrage and stockpiling charges are available to be re-invested in the Bowen Basin coal industry, and specifically funding System Capacity investment.

[18] Commission Final Determination, Applications for Authorisation A90906, A90907, A90908 lodged by Port Waratah Coal Services Pty Ltd (9 July 2004), p.62

4.5 Benefit: maintaining the queue at an efficient level

The QMS will allow DBCTPL to operate the Terminal with an efficient working vessel queue. This will underpin the efficiency of the Terminal by ensuring that there are enough vessels to cope with any under-utilisation of allocation by coal producers (so that there is never a circumstance where the Terminal should be idle), while avoiding there being too many vessels so that the vessels sit unproductively in a queue for longer than reasonably necessary.

4.6 Benefit: more efficient production

The QMS will provide coal producers greater certainty regarding the volume of coal they can expect to ship in upcoming months, and greater certainty as to the amount of time it will take from when they produce a tonne of coal to when it will be loaded on a ship. This added certainty will allow producers to manage their production better so that it matches the likely capacity of the coal chain to accept their coal and, if they choose, to take advantage of any excess allocation that becomes available (eg, through trading or conditional allocation).

4.7 Benefit: environment

The Terminal is situated adjacent to the Great Barrier Reef. The Great Barrier Reef clearly has enormous environmental importance to Australia and the world, and flow-on economic benefits for Queensland and Australia in tourism and other industries.

While the environmental risk associated with bulk cargo vessels can be managed, efficiently managing the vessel queue to reduce its length to a working queue of 10-15 vessels is a positive benefit.

4.8 Benefit: allowing a transition to a long-term solution

The QMS will not solve the problem of demand outstripping the capacity of the coal chain. Coal producers can produce enough tonnes of coal to meet demand, and would benefit from being able to sell those tonnes at today's high coal prices. However, while they are constrained by System Capacity, they are incurring the cost of lost opportunity.

It is clearly in the interests of the export coal industry and in Australia's general economic interest, therefore, to expand capacity in the Goonyella coal chain and to allow throughput to meet demand.

The QMS, by removing immediate concerns as to spiralling demurrage costs, will facilitate a significantly improved environment to consider long term investment decisions.

4.9 Detriment: impact on competition

Market definition

DBCTPL submits that there are potentially two markets of relevance: the market for coal handling and ship loading services in the northern Bowen Basin, and the market for coal.

The Terminal is not the only ship loading facility in the Bowen Basin. There is also the Hay Point Coal Terminal within approximately 500 metres of the Terminal, which is not a common user facility, as well as the Abbot Point Coal Terminal and the RG Tanna and Barry Point coal terminals operated by the Gladstone Port Authority which have coal ship loading capability.

The market for coal is likely to be either an Asian market or a global market.

DBCTPL submits that it is not necessary to determine with certainty the geographical extent of these markets, as the impact the QMS has on competition is the same regardless of market definition.

Impact on competition

The QMS involves allocation of capacity to coal producers based on a pro-rata reduction of their Annual Contract Tonnage. It might be argued that this is less competitive than a market solution where the most efficient producers are able to ship more coal than the less efficient producers. DBCTPL submits that getting a coal producer's coal through the Goonyella coal chain currently has little to do with the producer's efficiency or competitiveness, and there is little evidence that any coal producer is better able than others to do so. Therefore, the QMS will not reward inefficiency or penalise efficiency to any discernible extent.

In addition, the ability to trade allocations and participate in an allocation auction allows coal producers to obtain more capacity according to market forces. This will allow for greater competition between producers than the current arrangements.

The greater certainties the QMS will bring will also allow producers to increase the efficiency of their production.

Coal producers, while cooperating in the efficient development and operation of the Goonyella coal chain, will still compete for customers in the international coal market in the same way with or without the QMS, and, since the Terminal will still be operating at full capacity, the Terminal will be no more or less competitive with the alternative facilities in the region.

The existence of other competing terminals and the fact that the Terminal is at capacity means that other terminals are able to offer alternatives.

On that basis, DBCTPL submits that the QMS will have only a negligible negative effect, if any, on competition in relevant markets, and may in fact have a positive effect.

4.10 Detriment: impact on exports

The QMS is designed to ensure that the Terminal continues to operate at full System Capacity, while facilitating better management of the vessel queue. This will mean that there should not be any overall reduction in exports as a result of the QMS.

It must first be realised that System Capacity, including Terminal capacity, is not measureable to an exact figure, it can only be estimated by making various assumptions. The System Capacity that will actually be delivered during a certain period depends upon the nature of the demand pull, including vessel characteristics and arrival patterns, the influence of the cluster infrastructure and mine load point performance on the pattern of train arrivals, the nature, size and composition of consignments and stockpile management arrangments.[19] The effect of reduced vessel size, associated with the current vessel queue, on Terminal capacity has been noted earlier.

In this respect, it is important to distinguish between allocation and capacity. Producers will receive allocations which, in aggregate (especially taking account of any flexibility provisions that may be available) exceed the actual capacity of the coal chain at a point in time. This is deliberate. The immediate impact of under-using capacity is a shortening of the queue. This is why DBCTPL proposes to maintain a working queue of 10-15 vessels. This allows a buffer for under-use of allocation without the coal chain operating at less than maximum capacity.

There would need to be significant and sustained unused allocation before the coal chain stopped operating at full capacity. Such a level of unused allocation, even in the event of loss of a coal producer's productive capacity is very unlikely because of the contemplated flexibility mechanisms to be built into the QMS. The flexibility amounts and available allocation will be deliberately biased towards higher usage rates.

Individual coal producers may argue that the QMS will have the effect of reducing the amount of coal they would export without the QMS. It may be that some coal producers would be able to ship more coal than their pro-rata reduction without the QMS, and perhaps even their full Annual Contract Tonnage. However, this is not a factor of their competitiveness or efficiency, but simply their ability to push more of their tonnes through the congested Goonyella coal chain. For example, they may have been able to nominate more vessel arrivals sooner than others. However, because of the capacity constraints, that producer's ability to ship more tonnes will be at the expense of another producer who, despite the pro-rata reduction of their forecast demand, may find that the QMS allows them to ship more actual tonnes because of the more equitable and non-discriminatory distribution of capacity shortfalls.

Any reduction in exports for an individual coal producer will not be a public detriment where the overall level of exports remains the same, which is what the QMS is designed to achieve.

This desire by coal producers to push as much of their production through the congested coal chain as possible leads to the "tragedy of the commons", where all producers are scheduling more and more vessels, beyond System Capacity. The natural response of a producer when confronted with "oversold" capacity is to add more vessels to the queue in response to its perception that its competitors will be doing the same. Therefore "oversold" capacity becomes self-fulfilling.

[19] Synergies Economic Solutions, "Optimal incentive regulation for DBCT, A submission to the Queensland Competition Authority by the DBCT User Group", February 2005

DBCTPL therefore strongly submits that the QMS is very unlikely to result in a net reduction in exports, and to the extent that it may result in individual producers having lower exports, this is not a public detriment as overall exports are maintained.

4.11 Detriment: impact on long-term investment

The long term solution to System Capacity is to expand capacity appropriately throughout the coal chain, including at the Terminal.

DBCTPL is the operator of the Terminal, not its owner (Prime is the long term lessee), and so has no control over decisions relating to investment and expansion of the Terminal. There would, however, need to be complementary expansion in the coal chain for any expansion of the Terminal.

Granting the authorisation is unlikely to reduce the incentive for expansion at the Terminal. There are immediate expansion plans in place and Prime has recently submitted the DBCT Master Plan 2005 to DBCT Holdings.

The recent extensive press coverage demonstrates that this is an important and pressing issue, attracting the attention of both the Federal and Queensland governments. On that basis, DBCTPL submits that authorising the QMS will not reduce any incentives, commercial or otherwise, to invest in increased capacity at the Terminal and in the coal chain.

DBCTPL will continue to support the expansion of the Terminal, and to work closely with Prime in planning for and implementing the expansion.

4.12 Conclusion: substantial net public benefit

In summary, DBCTPL believes that the QMS will:

- reduce the vessel queues at the Terminal and will allow DBCTPL to operate the Terminal at an efficient working queue of approximately 10-15 vessels;
- re-establish the historical vessel size mix, increasing Terminal capacity;
- have the substantial public benefit of reducing dead-weight demurrage charges by approximately A$350 million in the remainder of 2005 and continue to have substantial savings each year that demand continues to outstrip System Capacity until the coal chain is expanded (not expected until late 2007 at the earliest);
- reduce inefficient coal stockpiling and the associated costs;
- improve the international competitiveness and reputation of the Australian coal industry, and of the Goonyella coal chain, including the Terminal, and the Bowen Basin coal producers in particular;
- facilitate more efficient investment decisions, and potential re-investment, by participants in the Bowen Basin coal industry;

- provide certainty to producers regarding the volume of coal they can expect to export through the Terminal, as well as vessel loading times and schedules, which will allow producers to manage production more efficiently;

- reduce the risks which arise from substantial vessel queues adjacent to the Great Barrier Reef Marine Park; and

- assist in the transition to a long-term solution to the System Capacity constraints.

To the extent any individual coal producers suggest that the QMS may affect its individual export tonnages, this represents the "tragedy of the commons" as even if that were to be correct, the increase in exports by one producer will be at the cost of other producers such that overall, there will be no reduction in exports.

The substantial public benefits of the QMS therefore outweigh any public detriments.

DBCTPL therefore submits that the QMS meets the statutory test for authorisation under the TPA and the Commission should grant the authorisation to allow the realisation of the significant public benefits anticipated.

5 Request for urgent interim authorisation

5.1 Need for urgent action

As noted earlier, long vessel queues have formed off the Terminal. Coal exporters and the Bowen Basin coal industry are incurring substantial demurrage costs arising from these extensive vessel queues. Estimated demurrage costs in 2005 without the QMS are A$550 million, assuming the current trend in increasing vessel queues continues.

For these reasons, DBCTPL submits that the interim authorisation is necessary and urgent to ensure that the QMS is implemented as soon as practicable.

5.2 Substantial net public benefit

For the reasons set out in this application, DBCTPL believes that the QMS will not have a negative impact in any market in Australia and that the QMS will give rise to substantial public benefits.

If an interim authorisation is granted, substantial public benefits will arise in the reduction of deadweight demurrage costs. In terms of any public detriments, there is substantial capacity for coal exports in the region such that there will be no decrease in overall exports. Even if individual producers have a reduction in allocation, the reduction will be on a pro-rata, transparent and equitable basis.

Accordingly, DBCTPL respectfully requests the Commission to grant an interim authorisation urgently in respect of the QMS described in this application, so that DBCTPL can begin implementing the solution as soon as possible.

5.3 Effect if interim is not granted

If the Commission does not grant an interim authorisation, demurrage costs in the region of A$550 million in 2005 will continue to be incurred as a deadweight cost to the Australian community as well as the continued damage to Australia's reputation in relation to coal exports.

5.4 Effects of interim authorisation not irreversible

If the Commission were to grant interim authorisation, this would not preclude it from reaching a different view in its final determination and deciding not to grant the authorisation.

DBCTPL believes that granting an interim authorisation enabling it to take steps to implement the QMS would not in any way prevent the Bowen Basin coal industry from returning substantially to its "pre-authorisation" state if the Commission were ultimately to deny authorisation.

First, in relation to the commencement of the QMS, after the relevant month or approximately equal period (it operates based on period allocations), the QMS could be terminated with producers having the ability to re-schedule vessel and production timetables accordingly for the balance of 2005.

Second, in relation to the contemplated auction process and any distribution of allocation, this would be subject to the Commission's approval of this application and, if the Commission subsequently denied authorisation, DBCTPL would simply unwind any allocation transfers that would have occurred as a result of the auction outcome and refrain from undertaking any further auctions after that date.

5.5 Conclusion

Importantly, there would be no impact on the volume of coal that the Terminal *actually* loads onto ships or the amount of coal that is *actually* delivered through the Goonyella coal chain in any given month, as across the industry it is extremely unlikely given current high levels of demand and pricing of coal that some coal producers would not have production to take up available export capacity and, based on the current imbalance between System Capacity and Annual Contract Tonnage, this would certainly be the case in the period through February 2006 or until the Commission makes a full assessment of the matter.

6 Request for authorisation

6.1 Introduction

There are three related applications for authorisation under sections 88(1) and 88(7) of the TPA.

The first application seeks authorisation for DBCTPL, and others, to make and give effect to a contract, arrangement or understanding with provisions that are, or may be, exclusionary provisions within the meaning of section 45 of the TPA.

The second application seeks authorisation for DBCTPL, and others, to make and give effect to a contract, arrangement or understanding that may have the purpose, effect or likely effect of substantially lessening competition within the meaning of section 45 of the TPA.

The third application seeks authorisation for DBCTPL, and others, to engage in conduct that might constitute a secondary boycott for the purpose of causing substantial loss or damage (prohibited by section 45D), a secondary boycott for the purpose of substantially lessening competition (prohibited by section 45DA) and a boycott affecting trade or commerce (prohibited by section 45DB).

DBCTPL is also requesting an urgent interim authorisation under section 91 of the TPA.

6.2 Length of authorisation

As has been noted elsewhere in this submission, demand for coal is likely to remain strong for several years. Until there is significant expansion of System Capacity, that demand will continue to outstrip capacity. While the QMS operates, and demand outstrips capacity, the QMS will ensure that the high demand does not lead to long vessel queues and high demurrage charges.

Since it will take several years for any System Capacity expansion to be effected, DBCTPL is seeking authorisation of the QMS until 31 December 2008.

6.3 Coverage

The authorisation is requested to apply to DBCTPL, DBCTPL's shareholders, Prime and all users of the Terminal, currently and during the term of the authorisation.

DBCTPL will provide the Commission with the names and addresses of any new shareholders and users during the term of the authorisation.

6.4 Substantial net public benefit

As has been demonstrated in Section 4 of this submission, the QMS will generate substantial public benefits by bringing about substantial savings in demurrage costs for producers using the Terminal. The QMS will have no or negligible public detriments.

On that basis, DBCTPL respectfully submits that the statutory test is made out and the Commission should grant authorisation of the QMS for the period stated above.

7 Conclusion

7.1 Substantial vessel queue

There is currently a long and growing queue of vessels waiting at the Terminal with no realistic expectation of that queue shortening given current strong demand and System Capacity constraints.

7.2 Substantial public benefits and no, if any, public detriment

The QMS will generate substantial public benefits, especially by reducing economically inefficient demurrage charges significantly, while having no or negligible detriment to the public.

7.3 Request for interim authorisation

It is in the public interest to start reducing the vessel queue and demurrage charges at the earliest opportunity. DBCTPL therefore requests that the Commission grant an urgent interim authorisation enabling DBCTPL to take the steps required to implement the QMS and then for the QMS to commence while the Commission considers the matter.

The effects of granting an interim authorisation are not irreversible. The Terminal could return to its "pre-authorisation" state if final authorisation is denied.

7.4 Duration of authorisation

For the reasons set out in this application, DBCTPL requests that the final authorisation granted by the Commission in relation to the QMS should continue until 31 December 2008, when System Capacity expansion is expected to have occurred, particularly given that:

- the QMS has automatic periodic resets (at least once each financial year) which will mean an adjustment will only apply when demand for capacity exceeds System Capacity;
- under the provisions of the existing User Agreements, the Terminal Regulations are reviewed annually; and
- it is understood firm Annual Contract Tonnages have been agreed with all users, backed up by take or pay commitments, for that period.

As such, it is very difficult to see any substantive detriment in the QMS, compared with substantial public benefits, particularly in the reduction of demurrage estimated to be A$350 million in 2005, the enhancement of Australia's international competitiveness and the facilitation of a transition to an efficient long run solution.

7.5 Further assistance

If you have any questions, or would like any further information, DBCTPL would be pleased to assist.

Dalrymple Bay Coal Terminal Pty Ltd
5 April 2005

Dalrymple Bay Coal Terminal

Submission in support of authorisation for proposed queue management system at Dalrymple Bay Coal Terminal

Attachment A — Principles of proposed amendments to Terminal Regulations

DALRYMPLE BAY COAL TERMINAL PTY. LTD.

(INCORPORATED IN QUEENSLAND) A.C.N. 010 268 167 A.B.N. 12 010 268 167

MARTIN ARMSTRONG DRIVE, HAY POINT, QLD.

POSTAL ADDRESS
M.S. F283 MACKAY
QUEENSLAND 4740

- TELEX: AA46374
- FACSIMILE: (07) 49 563353
- CABLES: DALBAY - MACKAY
- TELEPHONE: (07) 49 438444

DALRYMPLE BAY COAL TERMINAL

Amendments to Terminal Regulations to equitably match loading of vessels with system throughput capacity

Issue	**Principles to apply**
Key Objectives	The key objectives of the amendments to Terminal Regulations (***Key Objectives***) are to: • ensure a fair, equitable and transparent allocation between Users of the maximum practicable achievable sustained throughput of the Goonyella coal chain, recognising current Terminal service levels (***System Capacity***); • achieve a sustainable reduction to a working level in vessels queuing to use the Terminal, so as to minimise dead weight demurrage costs to all Users; • maximise utilisation of System Capacity, hence maximising coal exports; and • restore the reputation of DBCT as a reliable and low demurrage facility.
Start Date	1 April 2005 (As far as practicable, entitlements to usage of available System Capacity will be calculated from this date, even if implementation commences after this date. This is subject to any necessary ACCC authorisation)
Basis for Allocations and usage of Allocations	Terminal Regulations will provide for distribution of System Capacity by way of allocations (***Allocations***) of vessel loading entitlement to Users (to be applied to vessels loading coal for each User), based on an independent expert's determination of the System Capacity over a relevant period of time (ie. the estimated number of tonnes of coal able to be loaded on vessels from coal mine loadpoints). It is estimated that the System Capacity rate for the balance of calendar 2005 will be between 52 and 53 Mt/yr, which is less than aggregate Annual Contract Tonnage rate of 56.82 Mt/yr to June 30 2005 and 57.82 Mt/yr until December 31 2005. Allocations will be made to Users proportionately to their respective Annual Contract Tonnages under User Agreements over the relevant period, except that a new User will not be entitled to be taken into account for an Allocation during the period (if any) from the commencement of its User Agreement until it both intends and is able to commence railing coal to DBCT (sufficient notice having been provided). Subject to Flexibility Provisions (defined below), a vessel will not be loaded unless Allocation is available in respect of each cargo to be loaded on it sufficient to allow complete loading of that cargo. Allocation consumed in respect of a vessel is subtracted from the relevant User's

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(INCORPORATED IN QUEENSLAND) A.C.N. 010 268 167 A.B.N. 12 010 268 167

MARTIN ARMSTRONG DRIVE, HAY POINT, QLD.

POSTAL ADDRESS
M.S. F283 MACKAY
QUEENSLAND 4740

- TELEX: AA46374
- FACSIMILE: (07) 49 563353
- CABLES: DALBAY - MACKAY
- TELEPHONE: (07) 49 438444

Issue	**Principles to apply**
	remaining Allocation. Allocations will be determined and made available to Users over an appropriate period, taking into account the variability of system performance and the ability of Users to influence vessel arrivals during that period. (These may be monthly or other approximately equal periods). The Consumption of Allocation by a User will be ultimately recorded as the quantity of Users' coal loaded on a vessel. If necessary to determine priority when all other relevant criteria are identical, Allocation will be taken to be consumed in the order in which it accrued, and the oldest remaining Allocation will have priority. Subject to Flexibility Provisions, any Allocated tonnage not consumed in a relevant period will not be available for use in future periods. Allocations for a relevant period may be adjusted by the independent administrator on not less than 1 month's notice, if System Capacity changes materially as determined by the independent expert from that predicted in determining those Allocations.
Working Queue Management	Despite any other provision of the Terminal Regulations, Allocations may be made from time to time (as necessary) based on a percentage of System Capacity, with the intent of reducing the queue of ships waiting to load at the Terminal to a level aimed at maximising throughput consistent with minimal demurrage - a working queue. In particular, System Capacity will be taken to be appropriately reduced in the period up to 30 June 2005, with the intention of so reducing the queue by that date to in the order of 15 vessels capable of carrying 1.26Mt.
Loading Order	Loading Order will be determined by the time when a vessel arrives subject to sufficient coal and Allocation, subject to Flexibility Provisions, being available. Despite any other provision of the Terminal Regulations: (a) priority of loading vessels, as provided above, will be subject to exceptions (***Operational Considerations***) to endeavour to ensure that the Key Objectives are met and vacant berth time at the Terminal is minimised; (b) the Operational Considerations will be defined in the Terminal Regulations, but in exceptional cases will involve the Operator exercising its discretion to implement what it considers to be a common-sense and equitable outcome; and (c) the Operator must not exercise such discretion without first using reasonable endeavours to consult with any Users which may be adversely affected by it, recognising that rapid decisions may be required Loading order will be subject to a minimum 14 day "nomination period" for

DALRYMPLE BAY COAL TERMINAL PTY. LTD.
(INCORPORATED IN QUEENSLAND) A.C.N. 010 268 167 A.B.N. 12 010 268 167

MARTIN ARMSTRONG DRIVE, HAY POINT, QLD.

POSTAL ADDRESS
M.S. F283 MACKAY
QUEENSLAND 4740

- TELEX: AA46374
- FACSIMILE: (07) 49 563353
- CABLES: DALBAY - MACKAY
- TELEPHONE: (07) 49 438444

Issue	**Principles to apply**
	loadings, where Users are required to provide at predetermined intervals over that period all details of the specific vessel, cargo and coal loading source, to enable the Operator to plan. If lesser notice is provided or if details change so as to affect the ability of the Operator to achieve the Key Objectives, the Operator may choose to defer the loading of the vessel until all minimum notice periods in a revised 14 day period have elapsed.
Measurement of Allocation consumed by a vessel	Allocation will initially be determined, based on the maximum nominated tonnage (including a master's discretionary tonnages), adjusted to actual tonnes loaded at the time of loading. There will be procedures for administering Allocation, including measurement, balances and consumption.
Transfer of Allocations	Transfer or pooling of Allocations between Users (potentially including auctions of Allocations) is permitted, and will be recognised by the Operator when confirmed by relevant parties in writing.
Flexibility and Incentives to promote usage of Capacity	The Terminal Regulations will include Flexibility Provisions and may include appropriate physical and financial incentives to promote efficient usage of entitlement and to achieve the Key Objectives. ***Flexibility Provisions*** are provisions which allow for adjustments to Allocation across periods to allow for uncontrollable deviations from planned outcomes.
Term	The Amended Terminal Regulations will replace the current interim amendments to Terminal Regulations, and will apply until the earliest of the completion of Phase 1 of the anticipated expansion of DBCT, 31 December 2008 or the date when System Capacity reaches or exceeds aggregate tonnages that Users wish to ship through the DBCT on a sustained basis. The Operator will annually review the effectiveness of Terminal Regulations in meeting the Key Objectives.
Administrator	Day to day administration of the Terminal Regulations will continue to be with the Operator. The board of the Operator will appoint an independent administrator who will review the administration by the Operator and determine any disputes in relation to Allocations (including disputes as to the Operator's exercise of discretions).

DALRYMPLE BAY COAL TERMINAL PTY. LTD.
(INCORPORATED IN QUEENSLAND) A.C.N. 010 268 167 A.B.N. 12 010 268 167

MARTIN ARMSTRONG DRIVE, HAY POINT, QLD.

POSTAL ADDRESS
M.S. F283 MACKAY
QUEENSLAND 4740

- TELEX: AA46374
- FACSIMILE: (07) 49 563353
- CABLES: DALBAY - MACKAY
- TELEPHONE: (07) 49 438444

Issue	**Principles to apply**
The Operator's role	Clause 9 of the current Interim Amendments to Terminal Regulations will continue to apply for the Term (with appropriate modifications to relate to the new amendments outlined above, and on the basis that Allocations disputes will be determined by the independent administrator).
Terminal Regulations do not authorise over shipping	Despite any other provision of the Terminal Regulations whilst System Capacity is less than demand for shipping through DBCT the Terminal Regulations will not be construed as entitling any User to ship in a Financial Year more than its entitlement under its User Agreement for that Financial Year (including any entitlement duly acquired from another User).
Transitional	The amendments to Terminal Regulations will replace the Interim Amendments to Terminal Regulations due to expire on 30 June 2005. All vessels with a deemed time of arrival and accrual of "notional entitlement" which occurred before 1 April 2005 will be deemed to have Allocation under the Terminal Regulations as then amended, including Laycan Adjustment as described in clause 2.3 c (v). For clarification "notional entitlement" which would have accrued in the April – June 2005 quarter but allocated to a vessel prior to 1 April 2005 is taken not to have accrued prior to 1 April 2005.

Dalrymple Bay Coal Terminal

Submission in support of authorisation for proposed queue management system at Dalrymple Bay Coal Terminal

Attachment B — Terminal Regulations

DALRYMPLE BAY COAL TERMINAL

TERMINAL REGULATIONS

Revised - May 2003

Approved - February 2004

TABLE OF CONTENTS

1. REGISTER OF AMENDMENTS

The following contains amendments, which have been made to the contents of this revision of the Terminal Regulations.

Page	Amendment Description
All	Header – Changed Revision 4, authoriser from 'Mgr COM' to Mgr CSC'. Replace references to Ports Corporation with Prime Infrastructure.
1	Document revised delete 'April 2002' and insert 'May 2003'
6	Distribution List delete 'Australian Premium Coal Pty Ltd 2 copies' and insert 'Australian Premium Coal Pty Ltd – Coppabella 2 copies' 'Australian Premium Coal Pty Ltd – Moorvale 1 copy' 'Hail Creek Coal 1 copy'
7	1.1 Delete definition 'Approved Quality Plan' and insert 'Approved Handling Instructions' Delete definition 'Consignment' and insert 'Consignment Note' Insert definition 'Customer' and 'Customer Agreement'
8	Amend definition 'Lessee'
9	1.1 Delete 'Terminal – leased by CL-NQ and insert leased by Prime Infrastructure' Delete definition 'Vessel Consignment' and insert 'Parcel' Insert definition 'Parcel'
10	2.3 Delete heading 'Approved Quality Plans' and insert 'Approved Handling Instructions' (a) paragraph amended (b) delete 'quality plan' and insert 'handling instructions' after Customer insert 'or agreement. These instructions are converted to strategies for operating the Terminal.' (c) delete 'Quality Plan' and insert 'Handling Instructions and Strategies.'
11	3.1 6th bullet point. Delete 'single and participate Vessel Consignments,' and insert 'Parcels for full and participate shiploads,'
12	3.2 1st paragraph insert 'in writing' Delete 'the twentieth day of each Month' and insert 'or before 12 noon on the Wednesday prior to each DBCT/QR/Users Monthly Meeting' Delete 'weekly' and insert 'monthly' increments Delete 'Tonnes to be railed by' Insert 'detailing tonnes to be shipped by:' 2nd Paragraph after all insert 'Parcels together with their specified' after Month insert 'of that three Month period' Bullet points 7 – 11 deleted Last point delete 'Proposed quality plan' and insert 'Proposed Handling Instructions'
	3.3 Delete 'Vessel' and insert 'Parcel' (3.6) previous document (a) 1st sentence after submit insert 'in writing' and delete 'Vessel' and insert 'Parcel', after Vessel insert 'specified in the nomination,' 2nd last bullet point after special insert 'stacking or' after proposed insert 'handling instructions in accordance with Regulation 2.3

	last bullet point after tonnages insert 'authorised by the Customer.'

12	3.3	(c) 1st bullet point amended
13	3.4	Delete '12 days in daily increments its railing requirements' and insert 'two weeks, commencing the following Monday,' Delete bullet points 1-3 and 5 – 6 Insert bullet point 'Other train loading/unloading constraints (e.g. split trains possibly required).'
	3.5	Section Operator to Advise Railing Plan replaces 3.4
14	3.6	Section replaces 3.5 Operator to Advise Daily Railing Schedule (a) section amended (b) 1st sentence after must insert 'make available, through the Operator's system,'
	3.7	1st paragraph delete 'submit to' and insert 'make available' and delete '12 day' and insert 'seven day' 2nd bullet insert 'Parcels and'
15	3.8	1st paragraph delete 'Vessel Consignment' and insert 'Parcel' After thereto insert' (refer Regulation 6.6)'
	3.9	Delete section 'Loading of blended coal'
16	4.1	(b) paragraph amended
	4.2	2nd bullet point insert 'Number of rakes;' (b) remove section
	4.3	First sentence insert 'Subject to the Approved Handling Instructions,' 1st bullet point delete plans and insert 'strategies' 2nd bullet point delete paragraph after Product Grade,
17	4.5	Sentence added
	5.2	Section replaces '5.2 Applications for cargo assembly stockpiles and
18	5.3	Designation of cargo assembly stockpiles'
	5.3	(b) delete '; and' from end of sentence (c) removed
	Delete Section 5.9 & 5.10 from previous document insert '5.8 Stockpile Height and Width'	
19	5.9	(a) 1st sentence amended (b) after that insert 'additional'
	5.10	(a) last sentence delete 'blended' insert 'required'
21	6.5	Delete 'Vessel Consignments of' from first sentence
22	6.6	Delete second last comment on last bullet point
23	6.9	1st sentence insert '(may)' and delete 'Ship Consignment and insert 'Parcel'
	6.10	1st sentence delete 'Ship Consignment and insert 'Parcel'
	6.14	1st sentence delete 'Vessel Consignment and insert 'Parcel' and delete 'written off' and insert 'subtracted from'

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Regulations, the following terms have the meanings specified below:

"***Agreed Specification***" means coal in a form which:

(a) Is capable of passing through a 300 mm grizzly; and

(b) Has a moisture content which allows it to be readily handled, stacked and reclaimed at the Terminal.

"***Annual Contract Tonnage***" means, in respect of a Customer, the aggregate entitlement it has under a Customer Agreement to ship coal through the Terminal in a relevant Financial Year.

"***Annual Railing Entitlement***" means, in respect of a Customer, the aggregate entitlement it has under a rail haulage agreement with QR to rail coal to the Terminal in a Financial Year.

"***Approved Handling Instructions***" means Handling Instructions approved by the Operator under Regulation 2.3.

"***Business Day***" means a day other than a Saturday, Sunday or public holiday in Mackay.

"***Certificate of Weight***" means a certificate of weight issued by an independent qualified marine surveyor evidencing the weight of coal loaded on board a Vessel.

"***Coal Transport Chain***" refers to the transportation of coal from commencement of loading at a mine site to the departure of a loaded vessel from the Terminal.

"***Consignment Note***" means a delivery docket issued by QR in respect of a train delivering coal to the Receiving Point.

"***Customer***" means a person who has entered into a Customer Agreement with Prime Infrastructure.

"***Customer Agreement***" means an agreement in which Prime Infrastructure authorises a Customer to ship coal through the Terminal.

"***Delivery Point***" means the end of the shiploader spout over a Vessel's rail at the Terminal.

"***Financial Year***" means each period of 12 months beginning on 1 July.

"***Good Operating and Maintenance Practice***" means, with respect to the operation and maintenance of the Terminal, adherence to a standard of practice which includes the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a competent, experienced and qualified operator of a facility comparable with the Terminal.

"***IMO Loading Code***" means the *Code of Practice for the safe Loading and Unloading of Bulk Carriers* promulgated by the International Maritime Organisation pursuant to IMO Resolution A.862(2), as amended or replaced from time to time.

"***Lessee***" means the lessee of the Terminal (currently Prime Infrastructure (DBCT) Management Pty Ltd and also, where the context permits, Prime Investor Services Limited as trustee of Prime Infrastructure (DBCT) Trust).

"***Month***" means a calendar month.

"***Operator***" means the operator of the Terminal (currently Dalrymple Bay Coal Terminal Pty Ltd)

"***Optimum***" means the achievement, as far as practicable and having regard to what is reasonably foreseeable at the relevant time, of the best and most cost-effective outcome, taking account, as appropriate, of:

- Lowest total whole of life cost;
- Reliability and economy of performance;
- Good Operating and Maintenance Practice;
- These Regulations; and
- In the case of competing interests of Customers and/or third persons where there is no provision for resolution under these Regulations, the Operator's assessment in good faith of fairness and the efficiency and economy of the Coal Transport Chain as a whole.

"***Parcel***" means a quantity of coal of a single Product Grade required by a Customer to be managed through the Coal Transport Chain by the Operator (whether or not it is a full shipload) in the manner contemplated in these Regulations.

"***Product Grade***" means the grade of relevant coal in accordance with the Operator's system for differentiating coal by product grades.

"***QR***" means Queensland Rail, or any other relevant rail freight provider delivering coal to the Terminal for a Customer.

"***Quarter***" means each period of three months beginning on 1 January, 1 April, 1 July or 1 October.

"***Receiving Point***" means the bottom dump rail receival station at the Terminal.

"***Regulation***" refers to these Terminal Regulations, as amended from time to time.

"***Terminal***" means the facility owned by DBCT Holdings Pty Ltd, leased by Prime Infrastructure and operated by the Operator at Hay Point near Mackay, Queensland including, where the context permits, all buildings, stockpile areas, industrial water storage areas, unloading and loading facilities, piers, wharves, roads, conveyors, plant, equipment, and apparatus, and the area occupied in relation to such facilities.

"***Train Consignment***" means a consignment of coal consigned to or for a Customer and received at the Receiving Point (whether or not it is a full train load).

"***Vessel***" means a ship or other craft capable of transporting goods by sea.

1.2 Interpretation

In the interpretation of these Regulations, where the context permits:

(a) Singular includes plural and vice versa;

(b) Reference to any gender includes all genders;

(c) Reference to a person includes a body corporate, association of persons, government or governmental authority; and

(d) Reference to "writing" include printing, typing, telex, facsimile and other means of reproducing words in a visible and tangible form; it also includes electronic communication to and from the Operator under a communication system established by the Operator principally for the operation of the Terminal, and all communications in respect of operational matters required to be in writing must be made by such electronic means.

2. OPERATION OF TERMINAL

2.1 Continuous Operation

Subject to these Regulations, and to maintenance and repairs, industrial action, inclement weather, breakdowns and other causes beyond the reasonable control of the Operator, the Operator will for 24 hours daily, including Saturdays, Sundays and public holidays, accept at the Terminal:

(a) Train Consignments for unloading and stockpiling; and

(b) Vessels for berthing, loading and sailing.

2.2 Compliance with Site Conditions and Procedures

All Customers and other persons within the Terminal from time to time must comply with site conditions and Procedures issued by the Operator, and all lawful directions of the Operator in respect of their being within the Terminal.

2.3 Approved Handling Instructions

(a) A Customer may submit to the Operator a set of proposed handling instructions detailing special product handling requirements or specifying stockpile nominations for the stacking of coal from nominated trains. These instructions will form part of the Parcel Nomination information detailed in Regulation 3.3. The Operator must consider each such proposal, and may (if relevant) suggest amendments. A Customer must provide details of special product handling requirements requested in a proposed handling instructions in electronic format compatible with the Operator's systems.

(b) The Operator must approve any proposed handling instructions (with amendments, if relevant), which it considers to be practicable and efficient and not detrimental to any other Customer or agreement. The Operator must incorporate Approved Handling Instructions in strategies for operating the Terminal.

(c) The Operator must comply with all Approved Handling Instructions and Strategies.

3. SCHEDULING

3.1 Customers to Advise Annual Programs

(a) (i) By no later than 15 February in each Financial Year; or

(ii) If the Customer has not previously delivered coal to the Terminal, as soon as practicable after the execution of its Customer Agreement,

each Customer must give Prime Infrastructure (with a copy to the Operator) an advice in writing (a "Utilisation Advice"), stating: -

- The amounts and types of coal, and respective mine origins, which the Customer proposes to ship through the Terminal during the next Financial Year, on a monthly basis;
- Any special requirements the Customer has in relation to its coal, including any special equipment or particular handling processes;
- The Customer's estimates of the coal it intends to ship through the Terminal for the 3 Financial Years of the Term following the Financial Year in (i);
- If the Customer is not at the time of the notice regularly delivering coal to the Terminal, when the Customer proposes to commence delivering coal to the Terminal;
- Subject to the consent of QR (which the Customer must endeavour to obtain), the Customer's Annual Railing Entitlement; and
- To the extent possible, the number, type and respective gross and dead weight tonnages of Vessels and number of Parcels for full and part shiploads, on a month by month basis, expected to ship the Customer's coal in the next Financial Year.

(b) On 1 July, 1 October, 1 January and 1 April in each Financial Year, the Customer must update the information contained in the Utilisation Advice relating to that Financial Year, and include projections of similar information for the 12 Month period commencing on the date of that update.

(c) Advised railing and shipping programs will form the basis for the Operator's operating plans and forecasts and interim handling charges.

3.2 Customers to Advise Monthly Shipping Requirements

Each Customer must also submit in writing to the Operator on or before 12 noon on the Wednesday prior to each DBCT/QR/Users Monthly Meeting its estimated shipping requirements for the next three months in monthly increments, detailing tonnes to be shipped by:

- Customer/Product Grade;
- Mine origin.

And nominate all Parcels together with their specified Vessels required to be loaded in the first Month of that three Month period, detailing:-

- Vessel name or TBN;
- Laycan spread;
- Scheduled arrival date within Laycans;
- Tonnes to be loaded per Customer/Product Grade; and
- Proposed Handling Instructions for specific product handling requirements (if applicable).

3.3 Customers to Provide Parcel Nominations

(a) Customers must submit in writing to the Operator Parcel nominations as early as practicable, but at least seven days prior to scheduled arrival of the Vessel specified in the nomination, detailing:-

- Vessel name;
- Scheduled arrival date/time (best estimate);
- Nominated tonnage per Customer/product grade/parcel;
- Country of destination;
- Export control number (ECN);
- Nominated cargo superintendent company;
- Nominated draft surveyor;
- IMO declaration code;
- If any special product handling is required, cargo loading instructions;
- If any special stacking or reclaiming is required, proposed handling instructions in accordance with Regulation 2.3; and
- Maximum and/or minimum tonnages authorised by the Customer.

(b) Vessels so nominated at least 7 days prior to scheduled arrival will be eligible for inclusion in the schedule for berthing and loading in sequence of arrival, subject to the other criteria to be taken into account in Vessel scheduling under this Regulation and Regulations 3.7, 3.8 and 6.6.

(c) It is recognised that, on occasions, Customers may be required to arrange shipments or Vessels which, because of the short notice, cannot comply with the established arrival notification requirements. In such circumstances, as much notice as possible must be given to the Operator. If notice is given less than 7 days before the actual arrival of a Vessel then, for the purposes of scheduling berthing and loading, the Vessel will be deemed to have arrived on the later of:

- the day 7 days after the date of the notice is given; or
- The earliest date on which a berth becomes available for a sufficient time to allow full loading of the Vessel under the scheduling in place at the time the notice was received (as subsequently varied by unforeseen changes).

3.4 Customers to Advise Weekly Railing Constraints

Each Customer must submit to the Operator each Tuesday by 12 noon for the next two weeks, commencing the following Monday, its' railing constraints in respect of the Terminal, detailing:

- Shifts unavailable to load trains; and
- Other train loading/unloading constraints (e.g. split trains possibly required).

3.5 Operator to Advise Railing Plan

a) Provided that it has received all notifications under Regulation 3.4 the operator acting as the rail coordinator on behalf of the Users will order trains taking into consideration:

- Only those Parcels that have been nominated under Regulation 3.3;
- Each vessels latest estimated time of arrival, (ETA);
- Terminal stockpile capacity;
- Terminal operating constraints;
- Individual Customer railing constraints as notified under Regulation 3.4.

b) The Operator must submit to QR by 3pm each Tuesday a railing plan for the week commencing the following Monday detailing:

- Number of trains required for the period for each mine;
- Preferred days trains are required to depart Jilalan, for each mine;
- Any Mine or Terminal operating constraints.

c) The Operator must also submit the following weeks tentative rail plan as an indication for upcoming demand.

d) The Operator must use reasonable endeavours to work with QR and Customers to develop weekly railing plans on the basis of:

- These Regulations;
- Equity amongst all Customers; and
- Achieving a balance in the performance of train unloading and shiploading consistent with the Optimum operation and efficiency of the Coal Transport Chain.

(e) The Operator must request QR to deliver by COB each Thursday an agreed railing plan for the following week (Mon–Sun) in writing detailing:-

- Mine;
- QR number;
- Service I.D.;
- Scheduled empty train departure Jilalan date/time;
- Scheduled mine arrival date/time;
- Scheduled Terminal loop arrival date/time.

and using reasonable endeavours to achieve equity amongst Coal Supply Chain stakeholders in respect of changes.

3.6 Operator to Advise Daily Railing Schedule

(a) The operator will must consult with QR and the Customers on a continual basis regarding the rail schedule and any proposed changes, taking into account:

- Variation in vessel arrival times and/or loading conditions;
- Unforeseen delays in the Coal Supply Chain;
- Optimum operation and efficiency of the Coal Supply Chain; and
- Equity amongst Coal Supply Chain stakeholders.

(b) The Operator must make available, through the Operator's system, to all Customers the daily train schedules agreed to by QR and update/amend those schedules on a timely basis to reflect changes and amendments. Each Customer must use all reasonable endeavours to comply with such train schedules.

3.7 Operator to Advise Vessel Loading Schedules

The Operator must develop, regularly update, and make available to Customers, Vessel loading schedules over a 7 day planning horizon, detailing in respect of each Vessel:

- Vessel name;
- Parcels and total tonnes scheduled for loading;
- Arrived or ETA date/time;
- Scheduled pilot boarding date/time for berthing;
- Scheduled pilot boarding date/time for sailing;
- Sailing date/time;
- Berth number;
- Individual Customer tonnes;
- Minimum deballasting time;
- Gross loading time;
- Planned sailing draft;
- Nominated shipping agent; and
- Current/planned product loading sequence and status.

3.8 Customers to Provide Authorisations to Berth and Load Vessels

A Customer must submit to the Operator in respect of each Parcel of the Customer a written authority to berth and load the Vessel, detailing when the Vessel may be considered for berthing and loading and any special conditions attached thereto (refer Regulation 6.6).

3.9 Operator's Discretion for Efficiency Reasons

The Operator may, in its discretion, make minor departures from the strict operation of the foregoing Regulations if doing so:

(a) Increases the efficiency of operations at the Terminal; and

(a) Advantages one or more Customers and does not significantly disadvantage another Customer.

For example a departure causing a short delay in respect of one Customer may in some circumstances allow a number of other Customers to avoid a significant delay.

4. RECEIPT BY RAIL

4.1 General Principles for Acceptance

The Operator must, subject to any other Regulation:

(a) Accept trains for unloading; and

(b) Allocate priority to train unloading over Vessel outloading as far as practicable subject however to special operational or tidal requirements of any vessel, or vessels at or intending to load at the Terminal.

4.2 Loading at Mine and Notification to Operator

Wherever possible each Customer must load only single product Train Consignments. The Customer must notify the Operator in writing immediately upon completion of loading of each Train Consignment details, including: -

- Consignment note number;
- Number of rakes;
- Number of wagons loaded;

- First loaded wagon number;
- Last loaded wagon number;
- Mine origin;
- Customer code;
- Product Grade code;
- Total tonnage to be received from that train date and timestamps of train;
- Date and times of scheduled:
  - Arrival at mine;
  - Commencement of loading;
  - Completion of loading;
  - Departure from mine;
- Number of wagons loaded by wagon type;
- Number of wagons not loaded by wagon type;
- Customer comments i.e. alert the Operator to possible special product handling characteristics.

4.3 Stockpiling and Direct Loading

Subject to the Approved Handling Instructions, the Operator, at its sole discretion, may:

- Establish stacking strategies for each Train Consignment to stack the coal onto any stockpile at the Terminal established for the product of that Customer; or
- Direct load the product to a Vessel loading the same Customer/Product Grade,

4.4 All Coal to Meet Agreed Specification

(a) Each Customer must use all reasonable endeavours to ensure that each Train Consignment as received at the Terminal meets the Agreed Specification and is free of contaminants which may damage Terminal plant and equipment or prevent or delay the unloading of trains.

(b) If coal presented for unloading does not meet the Agreed Specification for that coal the Operator may:

- Impose additional charges on the Customer to unload, stockpile and load it, for material addition costs incurred; or

- Reject it if attempting to unload, stockpile and load it would incur material delays.

4.5 Train Tonnages Used for Stockpile Records

Train tonnages, as declared by the Customer, will be the basis for recording by the Operator of stockpile additions. For clarification, recording of tonnes by the Operator, using the Terminal's weigher, are recorded by the operator for the Operator's internal validation purposes.

5. STORAGE

5.1 Allocation of Stockpiles

The Operator must allocate stockpile space to each Customer in accordance with its Customer Agreement.

5.2 Cargo Assembly Stockpiles

Customers may agree to excise a portion of their stockpile entitlement on an equitable basis to be used as a cargo assembly area. Each such area will then which shall be available to those for use by the Operator to assemble cargo for all Customers who contribute to all or part of their stockpile entitlement to a common cargo assembly.

The Operator must allocate cargo assembly areas based on the following:

- A Parcel nomination has must have been received and approved in accordance with according to Regulation 2.3 and 3.3;
- A firm estimated time of arrival (ETA) must have been received by the Operator from the ship's Master;
- The Product can be must (as far as practicable) be able to be stacked for live reclaiming with minimal dozing requirements;

5.3 Criteria for Cargo Assembly Stockpiles

Cargo assembly stockpiles are to be created and utilized to achieve the following objectives:

(a) No coal is to be left in the cargo assembly stockpile after completion of loading of the cargo for which the assembly stockpile was created (except where it can be utilized in the next cargo intended by the Operator to be assembled in that area).

(b) To achieve the objective in (a), account must be taken of a Vessel's master's discretion to load less than the originally scheduled cargo

(i.e. normally not more than 90% of a cargo should be stockpiled in a cargo assembly stockpile).

5.4 Operator may Arrange Layout

The Operator may from time to time alter the storage area layout of the Terminal to achieve Optimum operation and efficiency of the Coal Transport Chain, as long as it does not affect the respective individual allocation of Customers to stockpile areas at the Terminal in accordance with relevant Customer Agreements

5.5 Operator to Advise Layout

The Operator must advise each Customer in writing of the Customer's stockpile layouts from time to time, detailing: -

- Stockpile I.D;
- Stockpile limits;
- Stockholding capacity;
- Effective dates;
- General arrangement plan.

5.6 Operator to Maintain Stockpile Records

The Operator must maintain records of stockpile inventories and advise each Customer of its respective: -

- Train Consignments stockpiled;
- Ship Consignments reclaimed;
- Stockpile reconciliation's; and
- Current stockpile balances.

5.7 Reconciliation of Stockpiles by Survey

A Customer may at any time re-determine its stockpile balance at the Terminal by survey, and must promptly advise the Operator of each reconciliation.

5.8 Stockpile Height and Width

The normal stockpile operating practice is to stack stockpiles to bench 3 (13.2m) and within the reach of the Reclaimer with the shortest reach to:

- minimise risk of stockpile slumping during wet weather;

- minimise dust lift off; and

- To maximise reclaiming rates and reduce operating requirements for dozing.

5.9 Special Product Handling

(a) A Customer may request the Operator in writing (through the Parcel handling instructions requested in Regulation 2.3) to, and the Operator must give reasonable consideration to a request by a Customer for special product handling (for example dozing, allowing stockpiles to dewater after heavy rainfall, blending into or out of stockpiles, stacking into stockpiles or reclaiming from stockpiles in modes which are not normal operating practice, but are within the yard machines operational capabilities).

(b) The Operator may undertake special handling of coal requested by a Customer and the Customer will be charged by Prime Infrastructure in accordance with its Customer Agreement (or if there is no provision in its Customer Agreement for such charges, at a rate determined by the Operator to cover the costs of providing that additional service and the Operator's usual margin).

(c) The Operator must not undertake any special work which would materially adversely affect any other Customer or result in materially increased costs to any other Customer without the consent of that affected Customer (which may be withheld, or given with or without conditions).

5.10 Blending

(a) The Operator is not required to blend from more than two stockpiles at a time, nor to blend in a ratio having a greater divergence than 60/40, where to do so would cause material delays to other Customers. Where a greater divergence is required, an additional charge may be imposed.

(b) Blending will only be provided

- On the initial discharge of coal into stockpiles; or
- At the time of loading of Vessels.

6. SHIPPING

6.1 Vessel Specifications

Vessels scheduled to load coal at the Terminal must comply with the following specifications:

- Bulk carrier or OBO type;
- Single deck;
- Self trimming;
- Without pontoon type hatch covers;
- Minimum weight 20,000 dwt;
- Maximum breadth 55 metres;
- Maximum berthing displacement 110,000 tonnes;
- Minimum clearance between deck obstructions of 15 metres;
- Able to safely enter, load without shifting or warping, remain afloat, receive a cargo in bulk with minimal deballasting delays and depart from the Terminal following completion of loading;
- In survey and meeting all requirements of the Australian Maritime Safety Authority; and
- Able to comply with all other berthing and unloading requirements in the Regulations (for example, Regulation 6.5) safely and in accordance with the IMO Loading Code.

6.2 Terminal Limitations

The following limitations apply to the Terminal:

Guaranteed loading draft on any day of the year	Minimum	15.32 M
Air draft (distance from 0.0 LWD to underside of shiploader boom in +12° position at fender face)	Maximum	30.3 M
Arrival trim with propeller fully immersed	Maximum	2.5 M
Underkeel Clearance	Minimum	1 M + 5% draft
Designed depth of water alongside berth		-19.62 M LWD

6.3 Only Complying Vessels to be Nominated

When nominating or accepting Vessels for loading at the Terminal, Customers must use their best endeavours to secure Vessels, which meet the specifications and accommodate the limitations in Regulations 6.1 and 6.2.

6.4 Refusal to Berth

The Operator may refuse to allow a Vessel to berth, or if already berthed require the berth be vacated, should the Operator consider that the Vessel does not meet the requirements in Regulations 6.1 or 6.2 or otherwise creates a hazard to the Terminal or its operations. The Customer involved must indemnify Prime Infrastructure and the Operator against any claim for delays including the cost of unberthing and re-berthing.

6.5 Loading in Parcels

Where possible, and subject to the IMO Loading Code, Vessels nominated to load more than one Parcel should complete each Parcel before starting the next and may take advantage of an increase in underkeel clearance only on those Parcels remaining to be loaded. Part cargos must only be loaded into empty holds unless otherwise directed by Customers.

6.6 Priority of Vessels

Vessels must be berthed and loaded in their respective order of arrival except to the extent that the Operator determines that the following considerations override that order of priority:

- The relevant Customer's authority to berth and load must be received by the Operator before a Vessel is deemed to have arrived for the purpose of scheduling berthing and loading;
- The Vessel Consignment plus 10% (or such other discretionary variance as is allowed under the relevant sale contract) of the tonnage nominated by the Customer must be available at the Terminal and/or on a train scheduled to arrive at the Terminal within 24 hours (or such longer time as the Operator determines) when berthing commences, unless the Customer notifies the Operator in writing before berthing commences that the Customer accepts the risk of coal not being available and the Vessel being required to unberth when not fully loaded;
- The Operator must be satisfied that the Vessel is in all respects ready to commence loading, before it is accepted for berthing;
- The Operator must be satisfied before berthing that all Regulations relating to the Vessel and its berthing, loading and departure are able to be complied with;

- Priority is also subject to:
  - Originally estimated arrival time notified in the 72 hour arrival notice given by the Vessel's Master;
  - Berth availability;
  - Tidal constraints;
  - Loading constraints;
  - Deballasting requirements;
  - Special product handling requirements (e.g. blending);
  - Prevailing weather conditions;
  - Equity amongst all Customers;
  - Optimum operation and efficiency of the Coal Transport Chain.

6.7 Delays Because of Excessive Draft when Loaded

If the tonnage of coal which a Customer wishes to load in a Vessel would cause the draft of that Vessel to exceed 15.32 metres, and the time and duration the Operator expects for such loading would prevent the Vessel from sailing on the next high tide after a draft of 15.32 metres is attained, the Customer whose cargo is to be loaded on the Ship may proceed with that loading only if:

(a) It submits to the Operator the prior written approval of the Customers (if any) whose Vessels may be affected by delaying the Vessel's departure;

(b) It agrees to forego the Vessel's position in queue to wait until the Vessel can be fully loaded and sail on the first high water after completion of loading; or

(c) The tonnage of coal to be loaded is reduced such that the Vessel can sail on the next high water tide.

6.8 Operator to be Given General Arrangement Plan

Customers must endeavour to obtain and supply to the Operator a general arrangement plan of each Vessel (with the exception of standard Panamax type gearless bulk carriers, which have not been subjected to structural modifications,) prior to the Vessel's first berthing at DBCT.

6.9 Operator is Shipper's Agent in Absence of Other Nomination

Unless otherwise requested by a Customer, the Operator will (may) act as the shipper's agent for each Parcel and be responsible to each Customer for preparing and processing all shipping documentation required by each Customer/shipper. Each Customer must ensure the payment of the appropriate costs, fees, duties and expenses incurred or charged in relation to such agency, and indemnify the Operator in respect of any liability incurred by it as shipper's agent.

6.10 Customer Responsible for Satisfying all Legal Requirements

Each Customer is responsible for obtaining export permits and complying with all laws and regulations in respect of each Parcel from the Terminal, and prior to a Vessel's arrival, providing the Operator with all necessary authorities and instructions to allow lawful loading and export and for the execution of all tasks to be performed in connection with that loading and export.

6.11 Surveyor to Determine Weight Loaded

Each Customer must engage the services of an independent surveyor to determine the weight of the Customer's coal loaded onto a Vessel, and to issue to Prime Infrastructure (with a copy to the Operator) a Certificate of Weight based on Vessel draught measures at the Terminal, immediately loading of a Vessel is completed.

6.12 Surveyor may Advise on Loading

The Operator may require the engagement by the master of a Vessel of a marine surveyor to provide loading and trimming advisory services in relation to loading at the Terminal. Even if the Operator meets the fees of that surveyor, the Operator will not be responsible for any advice given by that marine surveyor, who will be an independent contractor of the master.

6.13 Sampling and Quality Determination by Customers

Each Customer is responsible for arranging sampling and quality determination of the Customer's coal handled at the Terminal, and must provide personnel acceptable to the Operator to operate and maintain in a clean and tidy condition the Terminal's sampling equipment.

6.14 Certificate of Weight

At the completion of loading of each Vessel, the tonnages comprised in the Parcel, as declared on the Certificate of Weight, will be subtracted from the relevant records of stockpile balances kept by the Operator.

6.15 IMO Loading Code

The Operator may require a Customer and a Vessel to comply with all or part of the IMO Loading Code in respect of loading at the Terminal.

7. RISK AND PROPERTY, LIABILITY AND LOSSES

7.1 Risk in Respect of Coal at the Terminal

Neither Prime Infrastructure nor the Operator will be liable for any changes in the analysis or mass of any coal, and the entire risk and property in coal at the Terminal will at all times remain with the relevant Customer. Neither Prime Infrastructure nor the Operator will at any time be liable for any loss of and/or damage to coal or any loss sustained by a Customer, caused by fire, weather, handling by the Operator and any other cause, except to the extent that such loss and/or damage is caused by the negligence, or intentionally wrongful act or omission of, Prime Infrastructure or the Operator (as the case may be).

7.2 Indemnity for Breach, Negligence or Intentionally Wrong Act

A Customer will be liable to Prime Infrastructure and the Operator for all loss or damages suffered by them (including as a result of damage to the Terminal) caused by the Customer's breach of a Terminal Regulation or otherwise by the negligence or intentionally wrongful act or omission action of the Customer. Each Customer must also hold harmless and indemnify, Prime Infrastructure and the Operator from and against any action and/or claim from third parties for loss and/or damages suffered by third parties as a result of that Customer's breach of a Terminal Regulation, negligence or intentionally wrongful act or omission.

7.3 Inaccurate Scheduling Information

It is recognised that trains and Vessels do not always operate as scheduled or anticipated and that coal sales cannot always be accurately predicted. Prime Infrastructure, the Operator and a Customer will not be liable to each other should information provided by them pursuant to these Regulations in respect of scheduling transpire to be incorrect, as long as the information was given in the reasonable belief at the time that it was not misleading.

8. CHARGES BY OPERATOR

In addition to charges payable to Prime Infrastructure in respect of handling of coal, the Operator may also impose charges in respect of the berthing of Vessels at the Terminal, including:

- Shipper's agent fees (if the Operator is the shipper's agent);
- Wharfage charges; and
- Line handling charges.

9. TERMINAL INFORMATION BOOKLET

9.1 Operator may Issue Booklet

The Operator may issue and amend from time to time a Terminal Information Booklet dealing with (amongst other things) Terminal infrastructure, and conditions of arrival, loading and departure of Vessels from the Terminal

9.2 Booklet forms Part of Terminal Regulations

Any terms and conditions in the Terminal Information Booklet from time to time will form part of these Regulations, and will be binding on the Customers and masters, agents, owners and charterers of Vessels nominated to load at the Terminal.

Dalrymple Bay Coal Terminal

Submission in support of authorisation for proposed queue management system at Dalrymple Bay Coal Terminal

Attachment C — Existing Interim Amendments to Terminal Regulations

12/01/05

Dalrymple Bay Coal Terminal

Interim Amendments to Terminal Regulations

1 October 2004 – 30 June 2005

1. Background, definitions and interpretation

(a) The Terminal Regulations for Dalrymple Bay Coal Terminal are amended on an interim basis in accordance with these Interim Procedures.

(b) The Interim Procedures will amend the Terminal Regulations (by supplementing and modifying them) for a term (the ***Term***) which commences on 1 October 2004 and ends on 30 June 2005.

(c) In this document:

Interim Procedures means the paragraphs numbered 1 – 9 in this document.

Month means a calendar month.

Notional Entitlement means notional entitlement of a User to Ship Coal accruing pursuant to paragraph 2.2, as adjusted by any relevant Swap.

Prime means Prime Infrastructure (DBCT) Management Pty Ltd (ACN 097 698 916), and has the same meaning as ***Lessee*** in the Terminal Regulations.

Quarter means three Months comprised in a calendar quarter.

Swap means an arrangement between two Users in which one User's Notional Entitlement in respect of one or more Quarters is agreed to be reduced by a specified tonnage and the other User's Notional Entitlement for that Quarter or Quarters is agreed to be increased by a corresponding tonnage (subject to it being effective pursuant to clause 3(a)).

User means a company (or companies) which is (or are) a party to a User Agreement with Prime, and has the same meaning as ***Customer*** in the Terminal Regulations;

User Agreement means an agreement (including an agreement novated from Ports Corporation of Queensland to Prime) between Prime and a User, whether or not there are other parties to it, allowing the Shipment of Coal through the Terminal.

(d) Terms defined in each User Agreement have the same meaning in this document (except where they are separately defined in this document).

(e) The provisions in Schedule 3 to each User Agreement in relation to interpretation of that agreement apply to this document.

(f) For clarification, these Interim Procedures recognise that the Term might possibly be extended (recognising that there may be additions or modification to the Interim Procedures). Accordingly the wording provides for the possibility that there might possibly be further Quarters in an extended term.

(g) For the avoidance of doubt, nothing in the Interim Procedures affects or derogates from the rights or obligations of Prime or the Operator under the Operations & Maintenance Contract (***OMC***) between them, and in the event of any inconsistency between the terms of the Interim Procedures and the OMC, the terms of the OMC will prevail.

2. Notional Entitlements

2.1 Overview

(a) (**Priority based on time Notional Entitlement is allocated, not arrival time**) During the Term, the time of arrival of a Vessel will be replaced with time at which Notional Entitlement is allocated in respect of a Vessel, in determining priority under the Terminal Regulations for loading Vessels.

(b) (**Other factors still apply**) Other factors regulating priority under the Terminal Regulations will still apply.

(c) (**Order of arrival if no Vessel has Notional Entitlement**) If, at a particular time, no Vessel available to load Coal has Notional Entitlement allocated to it, then the order of arrival of Vessels will (subject to the Terminal Regulations) determine priority for loading until such time as a Vessel with Notional Entitlement is ready to load. Tonnages loaded pursuant to this paragraph will not be taken into account in determining use of Notional Entitlement.

(d) (**Specific provisions prevail**) The general principles in this paragraph 2.1 are subject to specific provisions in these Interim Procedures.

2.2 Notional Entitlement

In each Quarter of the Term, each User will (in respect of the mine(s) the subject of an individual User Agreement) have a ***Notional Entitlement*** to Ship tonnage through the Terminal, equal to one quarter of its Annual Contract Tonnage (take or pay and non-take or pay).

2.3 Allocation and Usage

(a) (**Allocation to Vessels**) A User's Notional Entitlement will be allocated to, and its usage will be tracked in respect of, relevant Vessels loading or proposed to load Coal for that User at the Terminal. Allocation of Notional Entitlement of a User to a specific Vessel will be deemed to occur on the latest of:

(i) the time of arrival of that Vessel in accordance with Terminal Regulation 6.6 (and, for clarification:

(A) re-stemming of a Vessel will be taken to be a re-nomination / re-notification of the Vessel under Termination Regulation 3.3; and

(B) a Vessel will not be taken to have arrived unless a notification of readiness to load it has been received by the Operator; or

(ii) the first time that sufficient Notional Entitlement has accrued to the User (or each relevant User, if the Vessel is to be loaded for more than one User) and has not otherwise been allocated, so that it can be and is allocated to that Vessel.

If two Vessels are allocated Notional Entitlement at the same time pursuant to paragraph (ii) above, the priority between them will then be determined according to which is taken to have arrived in accordance with paragraph (i) above.

(b) Despite paragraph 2.3(a), if a Vessel is loading or proposed to load Coal for more than one User at the Terminal, and:

(i) such Vessel has Notional Entitlement allocated to it in respect of at least one User (each a ***First User***); and

(ii) the loading of that Vessel will cause at least one other User (each an ***Other User***) to exceed its Notional Entitlement for the Quarter,

then the Vessel will be loaded in accordance with the allocation priorities in clause 2.3(a), as if the Vessel has Notional Entitlement to Ship Coal for the First Users only. In such a case, the tonnage in excess of each Other User's Notional Entitlement for the Quarter will be deducted from its Notional Entitlement for the subsequent Quarter.

(c) (**Detailed principles**) There is no limit on the number or arrival times of Vessels that may be ordered to Ship a User's Coal. Subject to the Terminal Regulations and other terms of these Interim Procedures, the following detailed principles apply:

(i) (**No carry over**) Any Notional Entitlement of a User not allocated by the end of a Quarter will not carry over to any subsequent quarter.

(ii) (**Adjustment after loading, of Notional Entitlement used**) A User's Notional Entitlement in respect of a Vessel to which that Notional Entitlement has been allocated will be reduced by the tonnage that the Vessel was originally nominated by the User to load. This reduction will occur at the time referred to in paragraph 2.3(a). However, once the Vessel has completed loading, the User's allocation and usage of Notional Entitlement will be adjusted, to reflect the actual tonnage of its Coal loaded on the Vessel.

(iii) (**Substitution if Vessel leaves Port unloaded**) If a Vessel with an allocation of Notional Entitlement leaves the Port of Hay Point without attempting to berth at the Terminal, another Vessel may (at the request of the relevant User) be deemed to have been allocated that Notional Entitlement as at the time it was originally allocated. For clarification, re-stemming, re-notification and re-nomination of a Vessel are not covered by this paragraph 2.3(c)(iii).

(iv) **(Intra-User swapping)** A User may request that where a Vessel intending to load its Coal has sufficient Notional Entitlement, that amount of Notional Entitlement may instead be allocated to another Vessel (with the amount of Notional Entitlement allocated being calculated on the intended tonnage of the latter Vessel).

(v) (**Laycan Adjustments**) If a Vessel proposing to load Coal of a User gives the Operator a "7 days" prior notice of arrival for a date in the last days of a Quarter and the Vessel would be entitled to Notional Entitlement if it arrived in that Quarter but it subsequently arrives in the first 3 days of the next Quarter, then that User may require that Notional Entitlement from the first-mentioned Quarter be allocated to that Vessel, instead of Notional

Entitlement being allocated from the Quarter in which the Vessel arrives. A User may only request this in respect of one relevant Vessel in any Quarter.

2.4 Miscellaneous

(a) (**Clarifications**) For clarification:

(i) The fact that a User has a Notional Entitlement for a Quarter does not guarantee that all or any part of that Notional Entitlement will be Shipped in that (or any) Quarter; and

(ii) Neither Notional Entitlement in itself nor any Swap undertaken under paragraph 3 affects the basis of charging TIC, TPC, TR, HCV or HCF.

(b) (**Transitional**)

Each Vessel already queued at the commencement of the Term will be deemed to have Notional Entitlement as if it had accrued in a previous Quarter. Allocation of Notional Entitlement will be tracked retrospectively from the commencement of the Term, despite the date of effect of these Interim Procedures.

3. Swaps of Notional Entitlement

(a) (**Users may Swap**) Users may Swap all or part of their Notional Entitlements between themselves on any terms and conditions they mutually agree. No Swap will be effective for the purposes of these Interim Procedures unless it is notified in writing by both relevant Users and submitted to the Operator at least 14 days prior to the earlier of:

(i) the expiry of the Month in which it first has effect; or

(ii) a relevant Vessel being affected by such Swap.

(b) (**Operator must observe Swaps**) The Operator must:

(i) record each Swap duly notified to it in accordance with these Interim Rules; and

(ii) thereafter deal with the relevant Users based on the revisions to their Notional Entitlements arising out of the notified Swap.

(c) (**User Agreement terms unaffected**) Nothing in this paragraph 3 affects the rights or obligations of a User under clause 9 or clause 13.3 of its User Agreement, and to the extent of any inconsistency, the User Agreement will prevail.

4. Reporting

The Operator must send Prime and Users a "System Management Report" at least weekly which contains:

(a) (**Notional Entitlement updates**) an update of each User's use of, and current amounts of, Notional Entitlements;

(b) (**performance**) current Terminal performance (including details of performance problems);

(c) ("**discretionary loading**") details of any "loading out of order pursuant to the Operator's discretion under paragraph 9(b)" including information as to which Users were loaded;

(d) (**relevant information**) berthing prospects, railing prospects and any other information the Operator reasonably considers relevant, with a view to optimising utilisation of the Terminal.

5. Stockpiles

(a) (**No dedicated stockpiles**) For the period of these Interim Procedures Users will forego rights to dedicated stockpiles, to the extent required by the Operator from time to time.

(b) (**No residual stockpiles**) Subject to paragraph 5(c), Users must ensure that Coal is railed in amounts such that, after Shipment, there will be no residual stockpile of a grade of Coal other than a grade which is frequently shipped through the Terminal by that User. (For example, if a less common grade of Coal is to be shipped, the amount of Coal railed should be less than the anticipated Shipment, with the Shipment being topped up with a more common grade of Coal, to ensure that any residual stockpile comprises the more common grade.)

(c) (**Quality Plans**) Paragraph 5(b) does not apply to a User which provides a Quality Plan acceptable to the Operator, to promptly dispose of a residual stockpile of the kind referred to in that paragraph.

(d) (**General principle**) Without limiting the foregoing, Users must in any event take reasonable steps to minimise the quantity of residual stockpiles after loading of each Vessel.

6. Blending

Users required by their sales contracts to provide blended Coal may do so, but:

(a) (**Operator to approve Quality Plan**) Coal will not be blended except in accordance with a Quality Plan approved by the Operator prior to the rail ordering and planning which precedes railing of that Coal;

(b) (**strict blends not preferred**) preference will be given to a Quality Plan in which "strict blending" is not required;

(c) (**no increase in proportions**) no User will have a right to blend in proportions which are greater than those commonly provided at the Terminal prior to 15 February 2004;

(d) (**blending at mine**) any blending of Coal from a single mine must take place at or before railing; and

(e) (**blending before stockpiling**) to the extent practicable, Coal must be blended at or prior to stockpiling at the Terminal, in preference to blending on outloading.

7. Multiple Loading

Users must use reasonable endeavours to cause purchasers of Coal to minimise multiple loading of parcels of Coal on Vessels, where multiple loading would increase berthing time at the Terminal.

8. Loading in general

(a) (**Single reclaimer**) The Operator may utilise single reclaimer loading during the Term to maximise throughput, even if guaranteed loading rates under Coal sales contracts might not be achieved when that occurs.

(b) (**Master's discretion**) Each User must ensure that a relevant Quality Plan is given to the Operator for a Vessel at least 72 hours prior to commencement of loading, clearly directing how Coal loadable at the master's discretion is to be dealt with.

9. The Operator's Role

The Operator:

(a) (**equity and good faith**) will endeavour to administer the Terminal Regulations (as modified by the Interim Procedures) equitably and in good faith, but with a view to maximising through-put (even if both objectives may not be entirely compatible at times, and some compromises may need to be made);

(b) (**deviations where sensible**) may elect not to comply with a provision of the Interim Procedures or any other provision of the Terminal Regulations where it reasonably considers that doing so is equitable and in accordance with the general objectives of these Interim Procedures (for example, the Terminal should not be idle simply because no User with Notional Entitlement is ready to load a Vessel – in such a case the normal priority provisions of the Terminal Regulations would usually be applied, subject to any other Interim Procedure);

(c) (**disputes**) will determine all disputes between Users arising out of the implementation of the Interim Procedures (unless the relevant Users agree otherwise in respect of a particular dispute); and

(d) (**no liability if acting in good faith**) will not be liable to any User or to Prime for the consequences of a decision made in good faith in endeavouring to achieve the objectives of the Interim Procedures or otherwise in respect of these Interim Procedures.

Attachment D — Summary of current proposals for coal chain expansion

Part of coal chain	Proposed expansion[20]
Track	QR NA provided details of its immediate capital plans in its Draft Access Undertaking submission early in 2004. It is planning to spend $87.1 million on capacity related capital work in the Goonyella System (which includes BMA's Hay Point port) up until mid 2010. This covers the Winchester and Saraji passing loops, the upgrade of Jilalan Yard and a third loop at DBCT, plus installation of two additional traction feeder stations. The total capacity delivered by this work is quoted in the Access Undertaking as a nominal 100Mt/year. With 6Mt expansion of Hay Point announced by BHP Billiton, taking that port from 34 to 40Mt/yr, plus tonnage already contracted by Prime, rail demand will be over 100Mt/yr from 2006. Campaign railing may also put more pressure on the system as tonnages increase (in other words, the trains may peak in certain parts of the track rather than be spread across all load points). This will require some combination of the listed Tier 2 projects ($80 million), Watonga Duplication ($40 million) and yet to be defined works to alleviate constraints traversing the Connors Range, which together have the potential to take capacity up to between 125 and 140 million tonnes. In a separate presentation provided 2 February 2005 on a separate topic, QR indicated current Goonyella track capacity is 95Mt (further constrained on specific branch lines), and the updated costs of expansion are $177 million (112Mt/year) (excludes asset renewals and ongoing contributions towards external distribution network, estimated to be $86 million) and a further $40 million to go to 125Mt. This capacity is not based on full coal chain modelling and the timing of major capacity upgrades not specified, but would have a lead time of the order of 2.5 years.

[20] Source: Xstrata, based on information provided to it by third parties.

Part of coal chain	Proposed expansion[20]
Trains	QR (Coal and Freight Services (C&FS)) currently operates 20 train consists (of up to 10,000 net tonnes) on the Goonyella corridor (DBCT and Hay Point). QR C&FS is planning to rearrange its fleet to provide 21 train consists in the near future in an endeavour to increase throughput of the total Goonyella system. QR C&FS has plans to introduce additional trains into the Goonyella system subject to sufficient port capacity. Due to the current demand for coal haulage in all our systems, current lead times for additional rollingstock and train crew resources can be indicatively 24 months from a commitment to the additional tonnes by our customers. QR C&FS is continually reviewing its rollingstock plans to ensure in the medium to long term that rollingstock capacity is not a constraint to exporting coal through the Port based on the current Goonyella system operating paradigm.
Load points	The performance of mine load points is generally good, but variable, both in terms of reliability, average load rates and recharge times between trains (recharge rates become critical with increasing throughput as mines will be required to receive more trains at shorter intervals meaning they must be able to recharge their on-site stockpiles). There are 4-5 load points that will require work to improve performance as the system moves to more campaign railing.
Mines	There are three new mines that are starting shipping through DBCT and brownfields expansions are underway at a number of other producers, so mine capacity is not a constraint in the short term. However, in the medium term at least one large mine is likely to exhaust current reserves.

Attachment E — Estimated Annual Contract Tonnages at the Dalrymple Bay Coal Terminal (financial year 2004/2005)

[Confidential - information deleted]